

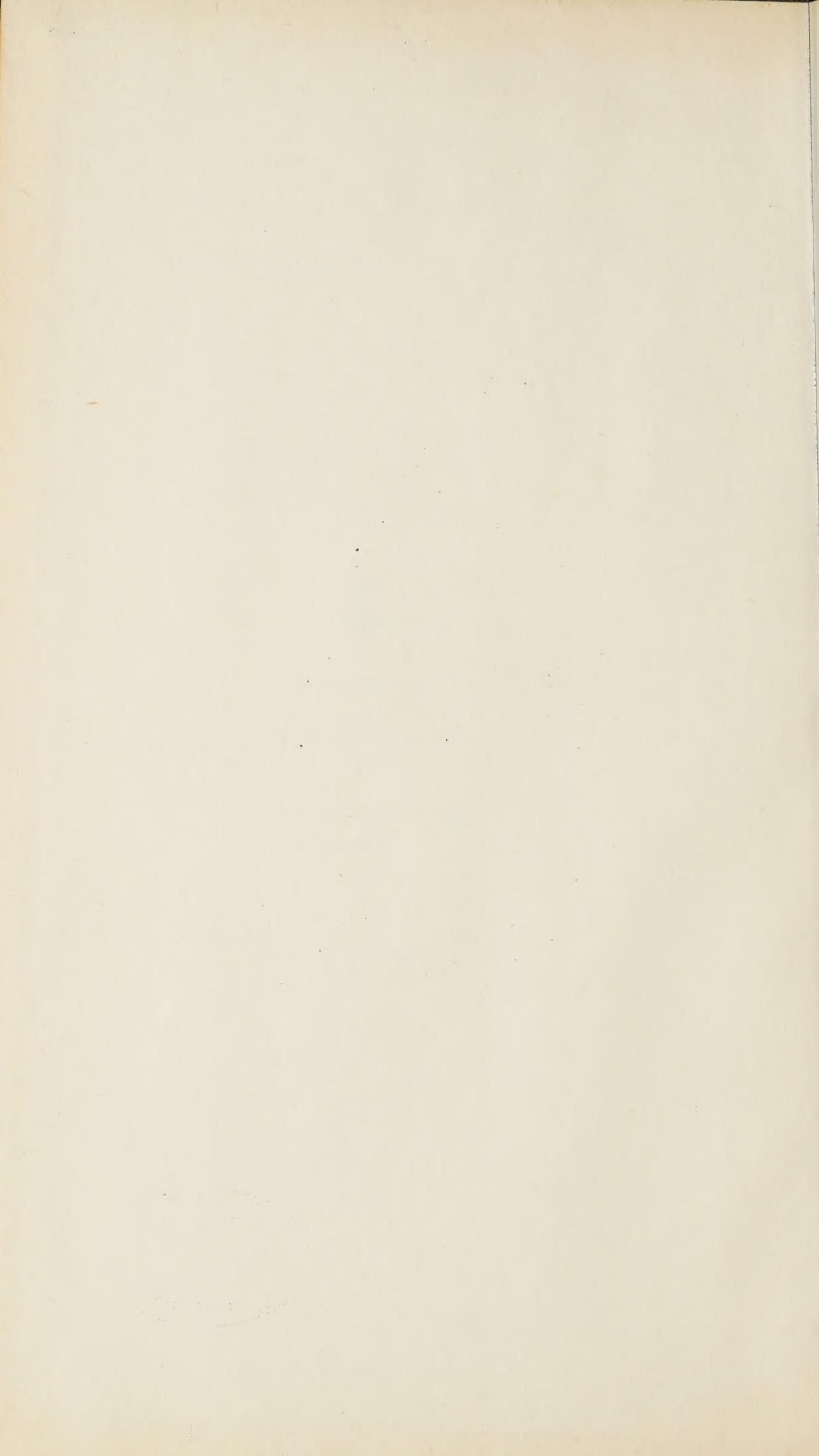


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Dates. Legislative assembly & Committees
Select committee on Administration of
Justice.

Proceedings





PROCEEDINGS
of the
SELECT COMMITTEE OF THE
ONTARIO LEGISLATIVE ASSEMBLY

APPOINTED TO ENQUIRE INTO AND REPORT
UPON CERTAIN MATTERS CONCERNING THE
ADMINISTRATION OF JUSTICE IN THE PROV-
INCE OF ONTARIO.

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Vol. 23.

Wednesday, August 29, 1951.



R. C. Sturgeon,
Official Reporter,
Room 121,
Parliament Bldgs.

T W E N T Y - T H I R D D A Y

Toronto, Ontario,
Wednesday, August 29, 1951,
At 10.30 o'clock a.m.

---The further proceedings of this Committee re-convened pursuant to adjournment.

---All parties present (excepting Mr. Janes).

---Same appearances as heretofore noted.

THE CHAIRMAN: Gentlemen, we will come to order. Mr. Wismer will resume, please.

WILLIAM M. WISMER,

A witness previously heard and now recalled, who, having been already sworn, continues his testimony as follows:

BY MR. McTAGUE:

Q Mr. Wismer, I think you wanted to correct an impression that might have been left with respect to S.E.C. policy in regard to prices.

A Yes. I was able to ascertain last night that the Securities and Exchange Commission does not set mark-ups on shares sold in the United States. As I understand, as Mr. Grummett suggested yesterday, some of the States did.

Q That is something which might be qualified, as far as the S.E.C. is concerned, and naturally might intervene to regulate a price?

A Yes.

Q Then how far had you proceeded in your chronological records yesterday when we closed? At approximately what date?

A I had just finished the matter of the perusal and filing of literature, which I had gone over completely.

There is one further point on that, however, I would like to mention.

Recently, on the suggestion of a gentleman of the Press, the Board of Governors decided to make a new regulation, which was subsequently approved by the Ontario Securities Commission, and filed with the Ontario Registrar of Regulations, regarding the disclosure that an issue is speculative.

I would like to read this regulation, for you.

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It says:

"32d. Before issuing, publishing or sending a circular, pamphlet, circular letter, circular telegram, or advertisement, a member of the Association, other than one who is a member of a stock exchange or The Investment Dealers' Association of Canada, shall submit three typewritten or proof copies to the secretary, and where the circular, pamphlet, circular letter, circular telegram, or advertisement contains an offer or solicitation respecting a trade in a security, the member may be required by the Board to state at the end thereof in easily legible letters which in no case shall be smaller than the letters in the main portion thereof, that the security is speculative."

You will note that in that regulation it says the Board "may". It was not contemplated as a loop-hole. The reason for that was that the perusing officer in the Association must have the discretion to be able to decide what is speculative and what is not, because

they may be endeavouring to sell an industrial issue.

BY THE CHAIRMAN:

Q What is not "speculative"? What sort of issue would be "not speculative"?

A For example, he would consider that Kerr-Addison, Lakeshore, Hollinger, and McIntyre issues will have established a dividend record.

BY MR. DOWNER:

Q A proven mine?

A Yes.

BY THE CHAIRMAN:

Q Yes. But when you get into marking a thing as "speculative" or "non-speculative", are you not getting on pretty dangerous ground? I think there may be some virtue in stamping some issues as "speculative". I would say that all mining stock was "speculative", no matter how well-established it was. Almost any common stock is speculative, because so many different factors come to bear on the fluctuations of its product.

A I would agree with that, Mr. Chairman, but the most of the literature we receive nowadays is on issues which are in the primary stage of distribution --

Q I think I know what you mean. Your distinction is between a company that is a going concern, that has a producing mine, and is a dividend payer, or one that is working toward that position, and has proven assets, and is exploiting those assets, whereas a "speculative", is one which has not been proven, and is where the money raised is for the purpose of establishing its quality and its value?

A Yes.

THE CHAIRMAN: I think that may be a good, practical distinction. But, on the other hand, I must say that there are not very many stocks on the market which are not speculative, in a broad sense.

MR. JOLLIFFE: It must be a little hard to draw the line, in some cases.

BY THE CHAIRMAN:

Q You do not stamp any issues as "unspeculative"?

A No.

MR. McTAGUE: They are just silent as to that.

THE CHAIRMAN: They may be very cautious. We do not do that with our own bonds. Even bonds are speculative to-day. Something happens in Ottawa, and the stock goes down.

BY MR. HOUCK:

Q I understand that every new issue on the market is considered speculative, until proven otherwise. Is that the idea?

A Yes. And I might say that the Toronto Stock Exchange will refuse that literature of its own members, following along on that policy.

THE CHAIRMAN: I would think that it might be a pretty sound practice. At all events, it is a warning to people that they are not buying something that is established and proven.

MR. HOUCK: As Mr. McTague said, a "moose pasture".

MR. McTAGUE: Yes.

BY MR. JOLLIFFE:

Q When was this practice instituted, Mr. Wismer?

A The members were advised of it on May 16th, 1951.

BY MR. McTAGUE:

Q Now, Mr. Wismer, will you get back to your chronology, and go on with the highlights, as you see them, as to what the Board has done?

A The Board found out, as a matter of experience, -- and most of the changes we have made and the requirements in the regulations of the Association have developed as a matter of experience -- that there was a tendency on the street for one member of the Association to maliciously steal salesmen away from other members of the Association, when he happened to want them.

As the result, the Board of Governors decided that in the Association we should keep a list of unemployed salesmen, which would be available to any member of the Association who wanted it.

Then, subsequently, the Board of Governors

further tackled this problem by advising members that they would not tolerate them going out and maliciously hiring salesmen away from other members.

What they must do is to contact the member of the Association whose salesman they wanted to employ, and then, of course, they were free to contact the salesman.

The purpose of that, of course, was to endeavour to get more responsibility amongst the general membership, and to keep them from going behind each others' backs.

BY I.R. HOUCK:

Q You mean by that, if I was a salesman for a broker-dealer, and I know that another broker-dealer wanted my services, I would just quit my job, and be on the unemployed list for a couple of days, and then go to the other dealer, without your approval?

A The Board of Governors considers each case which comes before it on its merits. They examine into the background.

But it would be possible, I suppose, for some salesmen to get around that requirement by going on

the unemployed list for a week or two. But, by and large, it has worked out pretty well.

BY MR. GRUMMETT:

Q Now, does the registration remain in effect, after they have ceased to be employed by the broker-dealer?

A Under the provisions of the Ontario Securities Act, they are put in a state of suspension -- it is a technical suspension -- then if they wish to be employed by a dealer, they can make their transfer and pay their ten dollars' fee to the Securities Commission, and a two-dollar fee to us.

I have seen cases where a salesman would have his registration and his associate membership under suspension for a period of two or three months. Usually, though, that happens on account of sickness or holidays.

BY MR. McTAGUE:

Q And what is the next highlight?

A I would like to mention here that gradually, over a period of time, we develop procedures as to admission of members as associate members in the

Association.

First of all, I would like to deal with associate members.

BY J.R. HOUCK:

Q Before you get into that, may I ask if you have any ladies listed on the sales forces?

A Yes, we have. I believe there are three or four.

Some of these requirements have come in recently. As I say, they have been built up gradually as the Board of Governors learns from experience.

Applicants for associate membership are divided into two categories, experienced and inexperienced.

An experienced applicant means one who has in the last five years been registered or licensed, and has traded in securities for a period of one year.

An inexperienced applicant is any other applicant outside of that.

Now, in regard to the experienced applicants; they file the applications for associate membership with us, and at the same time they file an application for registration as a salesman with the Ontario

Securities Commission.

That application form is reviewed by the officers of the Association, and by the salesmen's committee, and when they are called in for an interview by the salesmen's committee, the salesmen's committee makes its recommendation to the Board of Governors, and the Board of Governors decided whether or not they will approve the applicant for associate membership.

We then advise the Ontario Securities Commission that we have approved the applicant for associate membership, if the Commission sees fit to grant registration as a salesman.

Sometimes the Commission disagrees with the findings of the Board of Governors. Of course, they have information in their files which is not available to us, on some occasions.

Then, if the Commission advises us that they will grant registration to the applicant, he is admitted to associate membership in the Association.

That is the experienced category.

In the inexperienced category, they are required to work full-time for a period of six weeks for a member of the Association who is their intended

employer. And when they submit their application for associate membership, they are also required to give us an affidavit stating they have had employment full-time for a period of six weeks, and what their duties were.

When that is received, we make an appointment with them to come in and write an examination. We have a set of some thirty-six questions which are asked of them. There are three sets of examination papers at the present time.

The first six questions on the examination paper deal with Ontario security laws, and our regulations, and the last six questions are general questions on the securities business, to find out if they actually know anything about it.

However, the requirements of that examination are very high. If they fail to get five questions correct out of the first six, and four questions out of the last six, they fail on the examination.

BY MR. HOUCK:

Q Who corrects those papers?

A The papers are corrected by Mr. Gemmell, the Associate Secretary, or myself, and they go on to the

salesmen's committee, when the salesmen's committee interviews the applicant.

Would any member of the Committee like to see the examination papers?

MR. JOLLIFFE: Yes, I think that would be interesting.

THE CHAIRMAN: Yes, I think it would be helpful.

MR. HOUCK: I think these questions should have been held in abeyance, and we try the examination after these hearings are over.

THE CHAIRMAN: I hope I never have to write an examination again in my life.

MR. JOLLIFFE: I am interested to notice this, in view of our discussion on Thursday. I see that Question 10 says:

"In what respects do wells of the Lloydminster type differ from the wells of other producing areas such as Redwater?"

BY MR. McTAGUE:

Q Now, will you please go on?

BY THE CHAIRMAN:

Q What marks do they have to get, to pass?

A They must get five questions correct out of the first six, which are in connection with the securities laws and our regulations, and four out of the last six, which are general questions.

BY MR. HOUCK:

Q Is this a standard set of questions?

A There are two other sets of examinations.

Q They never know which set they are going to be asked about? Is that the idea?

A No. I had two men write the other day. One got eight wrong out of twelve, and the other six wrong out of twelve. They are just out in the cold, for a period of six months.

BY MR. McTAGUE:

Q Proceed, Mr. Wismer.

A If these inexperienced applicants fail on examination, the Board of Governors will not permit them to write it again for a period of six months. They also have to again spend six weeks with their

intended employer, and re-submit the affidavits with the application, just as they had done previously.

If they pass the examination, they are interviewed by the salesmen's committee. The salesmen's committee makes its recommendation to the Board of Governors, and it is carried on in the normal way.

BY I.R. JOLLIFFE:

Q Does the salesmen's committee consist of the salesmen's representative -- oh, there is only one sales representative on the Board of Governors.

A The salesmen's committee consists of the salesmen's representative on the Board who is the Chairman, and two other associate members, and one member of the Association. There are four on that Committee.

Q Three salesmen and one broker-dealer?

A Yes.

Of course, the salesmen are labelled as "inexperienced". When we send out letter to the Ontario Securities Commission, there is a note on it in red at the top "inexperienced". That means that under the requirements of the Board,

he is on probation for a period of six months, and during that period he may only transfer his registration once, and for a justifiable reason, and to establish the justifiability of the reason, he must appear before the salesmen's committee, or the Board of Governors.

The reason for that is that it was found that an inexperienced man would come into the business, and within the six months' period, would do a lot of transferring, and as a result, did not spend enough time with any one employer to really learn the basic principles about the securities business and the securities laws.

MR. McTAGUE: And you have now started on a sort of apprenticeship system?

THE WITNESS: Yes.

THE CHAIRMAN: I may say that it appears to me that compared with the Government regulations, these (indicating) really are "something".

MR. GRUMMETT: Building up a system almost like being articled as a law clerk, I guess.

THE WITNESS: In addition to that, after he has

been on probation for a period of six months, the Board of Governors may put him on probation for a further period of six months, if they do not consider that his probationary period has been carried out satisfactorily.

During that probationary period, the member of the Association who is employing him is responsible for his actions, and seeing that he carries out his job as a salesman properly. And the Board of Governors has advised all members of the Association that if a salesman gets into trouble during that six-months' probationary period, he may be held responsible, depending on the circumstances, and if he is held responsible, he will be liable to be fined up to one thousand dollars.

If the six-months probationary period has been completed satisfactorily, he, of course, goes off probation and is considered, for the purpose of the Association, as an experienced associate member, and then he can transfer freely, as he pleases, with the consent of the Securities Commission and the Board of Governors.

BY MR. HOUCK:

Q What would be the average number of applica-

tions per month for salesmen? Have you any idea?

A To answer that question, Mr. Houck, may I say that before we brought in these requirements for inexperienced salesmen, we were being deluged. The salesmen's committee was considering them on an average of about eight or ten a week, but when our stringent requirements came in, they dropped down to about one a week.

BY THE CHAIRMAN:

Q Would you say the membership on the whole are satisfied with this apprentice system?

A Yes.

Q They do not think it is too onerous?

A No. I have heard a lot of complimentary remarks about it.

Q They find they can carry on a legitimate business and sell stock under these regulations, just as effectively as they could before.

MR. JOLLIFFE: I think Mr. Lennox expressed the opinion that there was a surplus.

THE CHAIRMAN: I was not thinking so much of the salesmen. This is a broader question. It may be there are some types of stock they cannot sell

in a certain way, and that might curtail some of them. But on the whole, the members of the Association affected by this policy and these regulations, you feel, are pretty well satisfied with the way things are working out?

THE WITNESS: Yes, they do seem satisfied.

BY THE CHAIRMAN:

Q You think they are better off under this self-regulating system, than they were when they did not have it at all?

A Yes.

MR. HOUCK: Not only are they better off, but the public is better off, too.

MR. VILLENEUVE: Yes, that is right.

THE CHAIRMAN: There would be no doubt about that.

MR. McTAGUE: I might comment on that, Mr. Chairman. It seems quite clear that the matter of raising the standard of people engaged is constantly being dealt with by this Association. That is the

long-term policy, to try and better the standard.

THE CHAIRMAN: I suppose that would go to show that there is money in this country for legitimate, highly-speculative enterprises, and there is no real necessity in order to get that money to go to the length of extreme and questionable representations and dealings of that kind.

THE CHAIRMAN: We are getting a very high type of salesman coming into our organization now.

BY MR. VILLENEUVE:

Q You see some improvement?

A A great deal of improvement, Mr. Villeneuve.

BY MR. JOLLIFFE:

Q What is the ratio, Mr. Wismer, between the experienced and the inexperienced?

A I would say there would be about two inexperienced applicants for every one experienced applicant.

Q I suppose some of the experienced applicants have had previous experience in the employment of brokers, or possibly investment dealers.

A The point is that most of the experienced people are in the business, because our regulations say that "experienced" means that an applicant has been registered to trade in securities for a period of one year out of the last five.

Q It might be that a broker or investment dealer had one of your members?

A We have no objection to that.

Q I appreciate that, but it does happen, does it?

A Yes.

BY MR. HOUCK:

Q Supposing a candidate does pass this examination, and has no past criminal record, but still your Board of Governors does not approve of his personality, or they think he is not able to make a success of the business. Do they pass him on?

A They could refuse to grant him an associate membership in the interests of the Association.

Q Regardless of whether he passed the examination?

A Yes, if they wish.

BY MR. MCTAGUE:

Q If he was qualified by the Ontario Securities Commission, you would have to take him into your Association?

A No. Under our regulations every member who is not a member of the Toronto Stock Exchange, or the I.D.A., must be an associate member. If the Ontario Securities Commission wants us to admit a man, we do not have to, under our regulations.

BY MR. DUNNER:

Q Does that ever happen?

A No. The co-operation between the Association and the Commission has been very close. We have never had any difficulty on that score.

BY THE CHAIRMAN:

Q There are certain sanctions?

A Yes.

Q But, on the other hand, nobody has been trying to use the "big stick", particularly? The Securities Commission, as I understand it, from what you say, is trying to work in with your members in order

to assist them in carrying on in the way you have explained they want to do?

A Yes.

Q It seems to fit in for the general benefit of all concerned?

A Yes.

BY MR. HOUCK:

Q What would be the average age of your salesmen, Mr. Kismer?

A It would only be a guess, Mr. Houck, but I would say it would be around thirty-seven or thirty-eight.

BY MR. MCTAGUE:

Q Have you said all you want to say about the associate memberships?

A I would just like to mention that there are certain applications which the Board of Governors will not entertain. They are as follows:

"(a) No application for membership shall be entertained by the Board from any person, partnership or company where the indi-

vidual applicant or any partner, officer or director of the applicant has been convicted of any material criminal offence within the past fifteen years.

(b) No application from any person to become a partner, officer or director of an existing member shall be entertained by the Board where such person has been convicted of any material criminal offence within the past fifteen years."

He may have been convicted of a material criminal offence prior to the fifteen-year period. The Board of Governors will then be the judge as to whether he should be admitted, but within that period, we just cannot entertain his application.

BY MR. McTAGUE:

Q If my recollection is correct, that is pretty much consistent with the S.E.C.? They have a limited time for convictions?

A I do not know about that.

BY THE CHAIRMAN:

Q A "material criminal offence", I suppose,

is one that is related in some way, either to the securities business, or to fraud in some degree. I suppose you use the word "material" to distinguish criminal offences which might involve criminal negligence in driving a motor-car, or something of that kind?

BY MR. JOLLIFFE:

Q What is meant by the word "material"?

BY MR. McTAGUE:

Q What does it mean?

A The Board of Governors puts a very strict requirement on it. Unless I was aware of the facts, I cannot think of one where there has been any criminal offence.

BY THE CHAIRMAN:

Q They just do not apply?

A Yes. But I can think of cases which the Board of Governors might not think "material". For example, some highway traffic offence --

BY MR. JOLLIFFE:

Q What about reckless driving, under the

Criminal Code?

A I do not think they would consider that as "material" for our purposes. However, I cannot say. It depends on the circumstances of the case.

Q Which has not yet come up?

A Which has not come up as yet.

MR. JOLLIFFE: Mr. McTague, my understanding of the S.E.C. system is that the S.E.C. must register an applicant, unless he has a criminal record. It is only if he has a criminal record that they have any discretion.

MR. McTAGUE: Yes, and within a limited time.

BY THE CHAIRMAN:

Q A salesman has to be twenty-one years of age?

A Yes.

Q That is under the Act?

A It is not under the Act, but it is pursued by the Commission and the Association as a policy.

THE CHAIRMAN: I thought so.

BY MR. McTAGUE:

Q Do you want to deal with the applications

for membership; that is, the broker-dealers themselves?

A Yes. The material for application for membership is on the front page of the special rulings and requirements of the Board.

There again no application for membership shall be entertained by the Board from any person, partnership or company, where the individual applicant, or any partner, officer or director of the applicant has been convicted of any material criminal offence within the past fifteen years.

"No application from any person to become a partner, officer or director of an existing member shall be entertained by the Board --"

--Sometimes they want to come in subsequently.

--where such person has been convicted of any material criminal offence, within the past fifteen years."

"(C)No application for membership shall be entertained by the Board unless the individual applicant or one of the partners or officers of the applicant who will trade in securities has, within the past five years, been registered

or licensed to trade in securities for a period of two years or more and other partners or officers of the applicant who will trade in securities have, within the past five years, been registered or licensed to trade in securities for a period of one year or more."

The Board of Governors does not now want people coming into the business as members -- as broker-dealers -- who have not had some experience in the business. There are too many pit falls.

BY MR. JOLLIFIE:

Q. Tell now -- just a moment. How do the newcomers enter the business, under this Paragraph?

A. He, first of all, becomes an associate member. If he is inexperienced, he writes his examination to become an associate member. Then at the end of six months probation, he goes off probation and becomes experienced. At the end of a two-year period he may apply to become a member.

Q. From now on, it will be necessary for the man to have experience as a salesman before he can become a broker-dealer?

A. Yes.

BY MR. HOUCK:

Q. Do you have many applications from the United States, either for associate membership or membership?

A We have 40 associate members in the Association who are citizens of the United States. We have 7 sole owners, officers or partners of parties who are citizens of the United States.

This (indicating) is the mechanics for applying for membership. He must submit the application form under oath to us. At the same time he submits one to the Ontario Securities Commission, together with the required fee in each case.

Then he must get letters from two members of the Association who are not members of the Board of Governors, proposing him and seconding him. We found out, as a matter of experience, there was a possibility that some of the members of the Association were proposin and seconding applications in bad faith, and they did not know the background of the applicants.

Consequently, the Board issued a directive, and then would probably call them in before the Membership Committee or the Board of Governors, and if it was proved they proposed or seconded in bad faith, they would take drastic disciplinary action against them.

The proposer or seconder cannot be a member of

the Board of Governors.

Then they require a letter from a bank or trust company showing the applicant has at least \$5000. on deposit, or an audited financial statement showing he has at least \$5000. liquid capital.

Then we require him to submit with his application a questionnaire. This questionnaire was adopted recently and has been very effective in eliminating "fronts". This (indicating) of course, is under oath. The two most important questions are numbers 3 and 4.

Number 3 reads:

"A, whose application for registration as a salesman has not yet been granted, is asked by his friend B, who is a registered salesman, if he, A, would approach C and discuss with C the merits of a security which B is selling.

The plan is that A's talk with C will assist B to make a sale to C later.

Is there anything wrong with A assisting B in this way?"

BY MR. McTAGUE:

Q. At what would you think that was directed, Mr. Wismer? I think we had some discussion about that the other day.

A That is directed at endeavouring to dig out

possible "fronts" by finding out who loaned the money, or who made gifts to them prior to the application.

Of course, if a gift of \$5000. has been made to them within a few weeks before the application, naturally we are very suspicious.

Then number 4 reads:

"Under what circumstances may a registered salesman with a view to making a sale of a security call upon or telephone a prospective purchaser at his residence?"

That brings out arrears of income tax and things of that nature.

We had a case of an applicant not too long ago, where it was disclosed in answer to that question, that the applicant had arrears of \$17,000. income tax, which otherwise would not have come out.

They are very careful to answer those questions correctly, in view of the affidavit, and that affidavit must be taken severally by the proprietors or partners or all directors and officers of the applicant, as the case may be so that the information in addition to being disclosed to us, ^{is} disclosed to the partners, officers and directors of the applicant.

BY MR. GRUMELTT:

Q. This questionnaire, Mr. Wismer, undoubtedly

will control the irresponsible dealer, but do you think it will have any effect whatsoever on the man who sets up a "front"?

A After a man is in business, do you mean?

Q My point is this; the man who is the "front" for someone else usually has very little to lose; he knows he is a "front", and is willing to take ^{the} chances that involves. Therefore, do you think this affidavit and questionnaire will deter him from proceeding?

A No, it does not. That brings up a very interesting point, Mr. Grummett, and something I have noticed as a matter of experience.

You get these little fellows coming into the business with a capital of \$5000. How are they going to develop a clientelle? They cannot call people at their private residences on the telephone; they cannot go and call at houses to sell the issue they are sponsoring. The only place they can call them is at their places of business, where people are not interested and a majority of people in this country have not offices where they can talk.

So, as a result, they have to send that mail out.

They send that mail out, and on speculative stock in Ontario now, the return is practically nil

for grass root propositions.

BY MR. McTAGUE:

Q. What do you mean by "grass roots"? That is in opposition to my "moose pasture".

MR. GRUMMETT: It is a little deeper than your moose pasture.

THE WITNESS: I have got into the habit of using the terminology of the Street.

MR. JOLLIFFE: That is all right. Some of the finest grass in the country grows in the North.

THE CHAIRMAN: Not so much where the mines are.

MR. JOLLIFFE: Sometimes. Some of it is better.

THE CHAIRMAN: They have some of the best deposits in the over-burden, that is used for agricultural purposes. Up around Mattheson, they have some very good land.

MR. GRUMMETT: The richest gold pocket in the world was found not far from Mattheson -- the old Croesus. Just a pocket; nothing more.

MR. JOLLIFFE: Perhaps you had better stick to the Bay Street terminology.

THE WITNESS: He sends out mail. He has no

clientelle; he sends the mail out to what they call "new names". It is hard to say where he gets them.

As I said, the returns in Ontario are very small, practically nil in some cases, on the initial distribution. Members who sent out 15,000 or 20,000 pieces of mail around the country found the returns very small. I have been advised that the returns on mail going out at the present time to both the United States and all of Canada, the new names -- that is where people send back coupons -- was 1/10th of 1 percent. on the average.

Now, when they get a request for information, they can call the person at his private residence. But the sales actually made on that basis, I am advised, are less than 1/10th of 1 percent, because they do not sell all these people who request information. The average sales which are made is 250 shares, and the average price is around 30¢ or 40¢ per share, so that you can see that a new man coming into the business has a very difficult time rounding up clients, and as a result, his \$5000. is liable to be dissipated very rapidly, and perhaps he has only been in business three or four months.

That is the stage where he becomes wide open to the people behind the scenes, who want to make him

into a "front man".

BY MR. GRUMETT:

Q. I think that is right.

A In our financial statements, we have questions under oath which require him to disclose any loans, and so on, and as he becomes increasingly desperate, it is hard to say what might happen. He might even falsify an affidavit. It is hard to say.

Once you get a broker-dealer in that position, if he is a "front" as a former Governor said, "He is as hard to dig out as a needle in the Bank of Nova Scotia Building".

Q He knows he must control his operations as he started, but he becomes under the control of the broker behind him, and there is nothing for him to do but continue his illegal dealings.

A He becomes increasingly involved in the web.

BY MR. JOLLIFFE:

Q. Mr. Wismer, apart from the case you mention of a man who may be drawn into the position of a "front" -- sometimes after he has been registered -- what has been your experience with regard to this questionnaire (indicating)? How long has it been in use?

A This has been in use, since, I think, March or

April of 1951 -- this year.

Q Prior to that time, was there any questions such as I see here (indicating) under the numbers "3" and "4"?

A No.

Q There were not?

A No.

Q And prior to that time, you did require a minimum of \$5000.?

A Yes.

Q What was the experience of the Board? Was it the experience of the Board that all the evidence that the funds in some cases -- the \$5000. cases -- was not independent capital?

A The Board of Governors thought it was independent capital, or they would not have admitted the applicant.

Q But you did not admit them all? You turned down some? What I want to know is, did you turn down any applicant prior to the use of this questionnaire (indicating) because you were satisfied that the applicant was not an independent applicant?

A I cannot remember a case at the moment.

Q You cannot remember such a case?

A No.

Q What about that period since this affidavit has

been in use? Has there been any cases in which you or the Board reached the conclusion that the applicant was not independent, notwithstanding the statement sworn to in the affidavit.

A Yes, there was one case.

Q There was a case?

A. Yes.

Q How many applicants have you dealt with since this became effective?

A Since the 1st of March -- the date of February 1st was mentioned a couple of days ago -- but since the 1st of March, we have dealt with 10 applications for membership. Of that number, 7 have been rejected, 2 have been granted by the Board, and of those 2 granted by the Board, 1 was refused by the Ontario Securities Commission on material which was not available to us, and the other application was from a member of the Board of Governors who was breaking away out of a partnership.

Q He is the only one who got "by"?

A Yes, and there is another one pending which may go through. It is a Quebec application.

Q I understand from what you say that since March 1st, there has been only 1 successful application?

A Yes.

Q Did you give us the figures for the number of

salesmen applicants and rejections?

A I have not those figures. I can get them for you, if you like.

Q I think it might be interesting.

A I will get them.

Q Now, Mr. Lennox referred in his evidence, to the fact that in two recent cases -- filed -- one of them was a recent case -- but two cases which were under discussion, in which the Securities Commission cancelled the registration, the broker-dealer was undertaking his first and last issue.

A Yes, that is true.

Q One of those was quite recent?

A Yes.

Q When was that particular broker-dealer admitted by your Association? Before March 1st, I take it?

A Yes, he was admitted as a member of the Association back in August or September of 1950, I believe.

Q And at that time questions number 3 and 4 were not put to the applicant, nor sworn to?

A That is right. We had a lot of difficulty, Mr. Jolliffe, in deciding how to proceed on these matters in a practical way, because they have been very difficult to deal with.

The Board of Governors has done a lot of sweating.

BY MR. GRUMETT:

Q. Does it not boil down to this; the honest, reliable dealer gives you very little trouble. He is amenable to your rules and regulations?

But the man who is there acting as a "front" will deal as he desires, and he is the type of man you cannot control?

A That is right.

Q He is a thorn in the flesh of both your Association and the Ontario Securities Commission?

A That is right. And I have seen dealers whom I considered to be very honest and very reliable, who, for some reason -- possibly financial stress and strain -- have fallen into the hands of people who cannot get registration.

BY THE CHAIRMAN:

Q. I would think in regard to this mailing business, and from the figures you have given us, that there is a very narrow margin of profit in it for anybody? You have a large list, and only 1/10th of 1 percent. result in requests for information --

BY MR. DOWNER:

Q. And 1/10th of 1 percent. sales after that?

THE CHAIRMAN: No. He did not estimate how many would result in sales. Supposing they all resulted in sales; on the figures you have given, even 100,000 names would not produce very much money.

BY MR. JOLLIFFE:

Q. That conclusion is not very consistent with the heavy mailings, Mr. Lennox told us about.

A Mr. Jolliffe, I can qualify that point. I am talking about the returns now.

BY THE CHAIRMAN:

Q. The returns are less now?

A The returns have gone down.

MR. JOLLIFFE: This is a lean season.

MR. McTAGUE: It pretty well runs in cycles, anyhow.

BY MR. DOWNER:

Q. How long since they started to go down badly?

A When the articles were written by Mr. Roger Lewis and appeared in the United States. And I understand that these articles had a reader potential of about 90 million.

BY MR. JOLLIFFE:

Q. Were they syndicated?

A Yes.

BY MR. GRUMMETT:

Q. And in addition, the trouble in Korea would have some effect on the response to material advocating the sale of securities?

A Yes. There are various factors which enter into it. I notice there is a tendency now on the part of members to send out very few of what they call "lead getters".

BY MR. HOUCK:

Q. What is that expression?

A A "lead getter". It is an attempt to get the return coupon which permits them to call on the telephone.

BY THE CHAIRMAN:

Q. At the present time, it would appear it was not very attractive.

A Yes.

BY MR. DOWNER:

Q. The Leader Securities still think it is productive. In the last month, I received five letters.

THE CHAIRMAN: What list are you on?

MR. DOWNER: I don't know. Anyway, they did not get any reply.

THE CHAIRMAN: Perhaps you are on the ministerial list.

THE WITNESS: That is the point I am making. They send out now more than anything else, what are called "weekly market letters" and "market bulletins".

BY MR. JOLLIFFE:

Q. Yes. There is no doubt about that. I have a number of questions I want to ask Mr. Wismer about that, when Mr. McTague gets through.

THE CHAIRMAN: Shall we adjourn for five minutes? It has been suggested we adjourn about 12.30 today if that is in order.

MR. HOUCK: May I ask Mr. Wismer just one question before we adjourn, Mr. Chairman?

THE CHAIRMAN: Certainly.

BY MR. HOUCK:

Q. You referred a couple of times this morning that your Board had approved an application for associate membership which was rejected by the Ontario Securities Commission on material which you did not have. What material would they have, which you have not?

A Their files go back 22 years, and our files only go back to the organization of the Association.

BY MR. JOLLIFFE:

Q. The Ontario Securities Commission may also have information from the commissions of some other jurisdictions?

A. Yes.

Q. Which would not necessarily be available to you?

A. No.

BY MR. HOUCK:

Q. In other words, they thoroughly screen an applicant when you send him up?

A. Yes. As a matter of fact, our Board of Governors suggested to Mr. Lennox that all applicants for membership, including partners and officers, be examined under oath, under Section 12. We have no power to examine under oath.

Mr. Lennox wrote back saying he would be glad to undertake that; that there might be cases where he might not think it was necessary, but he would endeavour to do it.

We think that will make a greater impression upon applicants and impress upon them their responsibilities, and will also form a permanent record for future use.

THE CHAIRMAN: We will adjourn now for five minutes.

---Whereupon a short recess was had.

---Upon resuming.

THE CHAIRMAN: Gentlemen, shall we proceed?

BY MR. McTAGUE:

Q. Mr. Wismer, I rather got the impression from the latter part of your evidence, that things generally might be very bad, and in the doldrums in business and so on, and I would like you to perhaps explain that what you were saying does not apply to everybody in the business, and the reasons why.

A No; it does not apply to everyone in the business, because most of the members have established clientelles.

BY THE CHAIRMAN:

Q. In other words, this mailing list is for the purpose of getting new clients?

A Yes.

Q And that does not represent the whole business of the established broker-dealer by any means?

A No.

Q Then I wanted to ask you a question or two, with the consent of the Committee, to clarify certain things.

What is the normal course of the financing of

a mine and development now, as compared with what it used to be, in the main, when you were first at the Securities Commission?

A Well, a more stringent policy in regard to the release of vendors shares from escrow has had a very salutary effect.

When I was first with the Securities Commission, I noticed that three million share companies were incorporated, of which one million shares were vendors'. There was an automatic release of ten percent. or 100,000 shares, which left 900,000 escrowed vendors'.

Then you would see 500,000 shares optioned at 5¢ a share, 300,000 shares optioned at $7\frac{1}{2}$ ¢ a share, and 300,000 shares optioned at 10¢ a share.

So they would proceed to take down the 5¢, $7\frac{1}{2}$ ¢ and 10¢ stock for a total of 900,000 shares.

The policy then was to release one vendor share for each treasury share taken down, and, consequently, after having put in the neighbourhood of \$65,000 into the treasury of the company, they would have 1,900,000 shares, at an average of about 5¢ a share, which they would proceed to sell to the public and walk away from the deal.

I remember one particular case where a securities dealer had his registration cancelled by

the Commission who did something along that line on five occasions without any honest effort being made to explore or develop the property, or give the public a "run for its money."

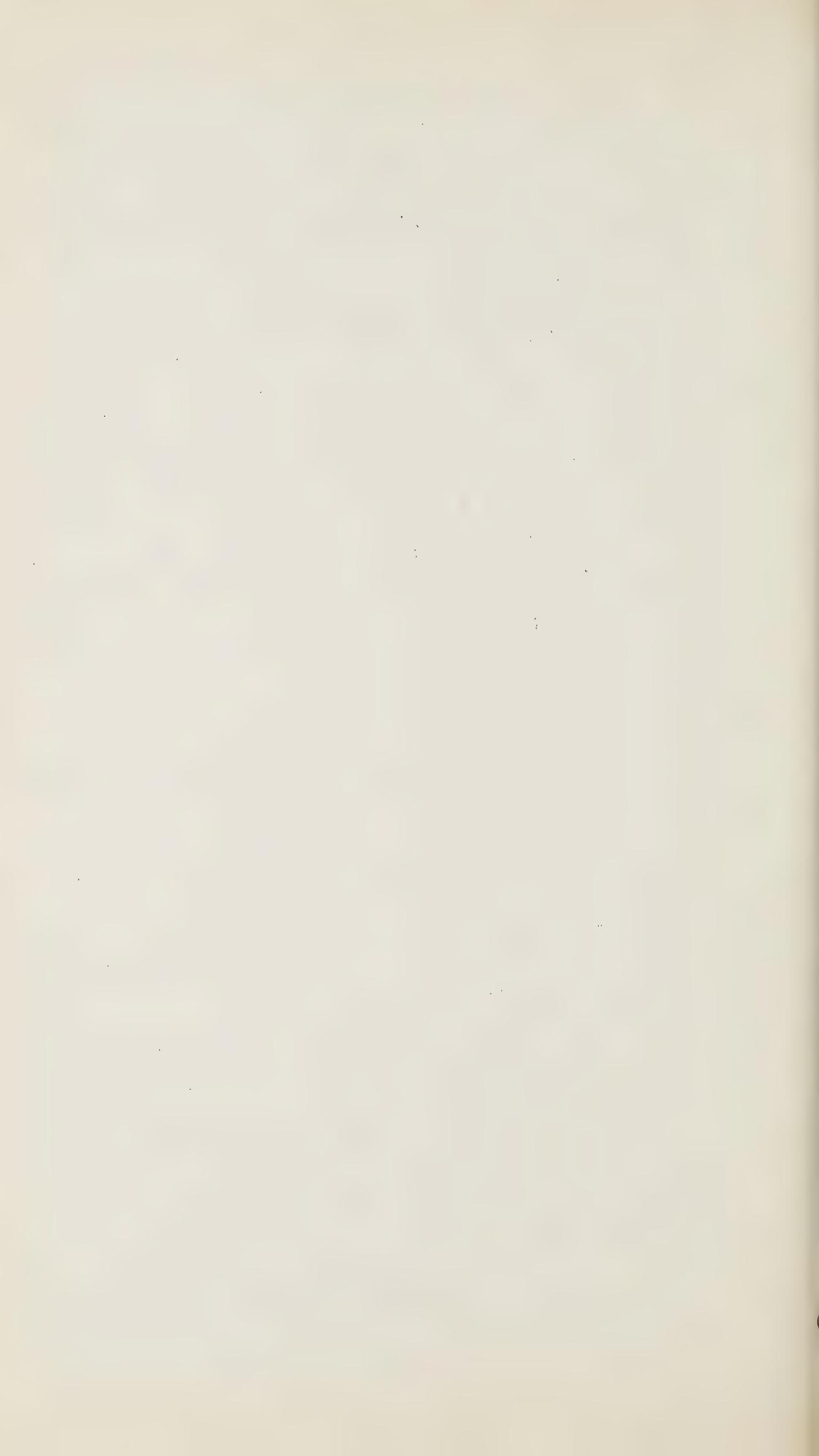
Now, that policy has all been changed. The vendors' position in the company is less. The release from escrow is not any more than one four three. In the last two years, I have noticed a great tendency on the Street to bring their companies along, and try to satisfy their customers and keep them for the future.

BY MR. JOLLIFFE:

Q. Will you tell me if you noticed a tendency in this regard; in the dim, distant days when I had some work to do in connection with this business, we prepared a lengthy option agreement, under which the broker-dealer could take down a great many shares -- possibly two million, over a long period of time, possibly month by month at rising prices.

As a general rule, he did not exercise more than two options -- sometimes only one.

In that regard, do you see any tendency toward the successful marketing of more shares and the exercising of more options,



or is it the general rule for options to be abandoned after the price fling?

A The tendency now is to go right through with options agreements.

Q All the way through?

A I would say, in all cases, all the way through, and the tendency is --

Q Would you say in the majority?

A Well, where would you draw the line of "majority"?

Q I don't know.

A I would say in two-thirds of the cases.

Q That is certainly a change from the old days?

A Yes.

Q Let me ask this question; I understand that the Stock Exchange now, as a result of some, I think, fairly recent decisions, is not prepared to list a stock if the original option covers more than one million shares. Is that right?

A I do not know.

Q Mr. Lennox gave us evidence about that. The Stock Exchange does not want to see the Treasury depleted by the original optionee; in other words, they

want sufficient shares to remain in the Treasury so the company could make a better deal if conditions warranted. Are the broker-dealers generally now governing themselves accordingly, and are the companies governing themselves accordingly? That is to say, are most deals now made with respect to one million shares or less?

A I cannot answer that question. I would only be guessing, if I tried.

Q You have, Mr. Wismer, have you not, an agreement with the Commission, as a matter of policy, as regards the number of shares which are authorized to be put in escrow in connection with companies of varying capitalizations?

A Yes, a new policy on that was brought into effect --

Q It was largely through the efforts of Mr. Lennox, was it not? Mr. Lennox covered that.

M.R. McTAGUE: Did he?

THE WITNESS: Mr. Lennox wrote a letter to the Association suggesting these changes. There was a joint meeting between the Broker-Dealers' Association, the Stock Exchange, and the Industrial Association, and

members of the legal profession.

BY I.R. JOLLIFFE:

Q But that is rather a different point. If we could come to the question of vendors' shares a little later, if you do not mind, I would like to go more fully into the question of these option agreements.

Perhaps I had better elaborate, so you will know what it is all about. The point is this; if you have, for example, a three-million share company, and 750,000 shares are issued as vendors' shares, if a broker-dealer obtains an option on all the remaining shares; namely 2,250,000 shares, at prices rising, let us say for the sake of illustration, from ten cents to one dollar, and if the development indicates an exceptionally meritorious property, the company is in this position; it has no shares remaining in the Treasury which could be disposed of, either through a broker-dealer or a securities issuer, at the much higher price, which might be possible as a result of the development.

It is at the mercy of the broker-dealer who has exclusive right to take down the shares, and the broker-dealer would sell them, for a property which is not valuable from their point of view, but if the

company had retained perhaps one million shares, it could have realized more money.

You see what I am getting at? My question is, has the Broker-Dealers' Association interested itself in that matter, that is to say, in assuring the original investors, in the event that the property proves worthwhile, and also in assuring the company itself of a fair chance of realizing and netting the Treasury much more money than would be possible in the first place? Is your Association interested in that question?

A Yes, we are.

Q You have interested yourselves in that?

A We have. As a matter of fact that is a policy which was worked out between the various organizations, that only 200,000 shares may be taken down for cash. The options must start at ten cents, and in addition, the vendors' position has been cut down.

Q That includes the situation in the first instance; it does mean that the Treasury benefits to the tune of, say, ten cents a share, instead of five cents in the original financing --

MR. McRAGUE: In other words, Mr. Jolliffe, we take --

MR. JOLLIFFE: But that does not meet my question.

MR. McTAGUE: The point is, how much is left in the Treasury, and not optioned? That is the point.

MR. JOLLIFFE: I want to know if the Association has concerned itself with that matter.

THE WITNESS: It seems to be the practice to increase capitalization, rather than have any shares left in the Treasury.

BY MR. JOLLIFFE:

Q I understand the Toronto Stock Exchange takes a different view. That is my understanding of the evidence given by Mr. Lennox. He said that the Stock Exchange would like to see every company retain shares in the company which they could later option, perhaps to some broker-dealer, or a securities issuer, or anyone, but, in any event, at a higher price.

THE CHAIRMAN: He said they would not list unless there was about one-third of the Treasury stock

free from option. With a three-million share company, that would be one million shares. Something to that effect.

MR. JOLLIFFE: There is a new policy there, which he explained to us.

THE WITNESS: In answer to your question directly, we have not gone into that situation at all.

THE CHAIRMAN: It may be a problem that is worth consideration by your Association in view of the recent Toronto Stock Exchange ruling.

MR. OCTAGUL: I would think so.

BY MR. JOLLIFFE:

Q You would agree, Mr. Wismer, that it would be bad business for members of your Association to be a party to any deal which might possibly make it difficult or impossible for the issue to be subsequently listed?

A Oh, yes, I would agree with that definitely.

BY THE CHAIRMAN:

Q If all the Treasury shares were tied up

under option, and at a certain stage it was decided to apply for listing, the optionee would have to release the option on a large block of shares before it would qualify for listing, and if the optionee should refuse to do that, it would put the company in a bad position?

A Yes.

M.R. JOLLIFFE: If there was a big demand on the unlisted market for shares, he might refuse, and he would be within his rights.

M.R. GRUMMETT: Or he might, by some long chance, be shown there was something there, and he would not want to release his option then.

THE CHAIRMAN: As I understand the ruling of the Toronto Stock Exchange, which is a comparatively recent one, the fact is that the broker-dealers have not yet considered the effect of it.

M.R. McTAGUE: It must be very recent.

THE CHAIRMAN: Mr. Lennox said it was very recent, and that the broker-dealers are not aware of it.

THE WITNESS: I do not know of it.

BY MR. JOLLIFFE:

Q I gathered from what Mr. Lennox said that he thought it was a step forward in the right direction?

A To proceed with the material required when applying for membership. We now require a letter from a Surety or Insurance Company, stating they are prepared to issue a broker's blanket bond, or securities insurance, or fidelity insurance, for a certain amount; in the larger centres, ten thousand dollars, if the applicant is granted membership in the Association, and that is, of course, without security being posted.

It is necessary, as well, for all the existing members of the Association to obtain a broker's blanket bond, or this security insurance or fidelity insurance, and they must have that by October first.

To date we have 45 members of the Association who have submitted evidence that they have the broker's blanket bond, but there are still 88 to go. That is exclusive of the members of the Toronto Stock Exchange, who already carry that.

BY MR. JOLLIFFE:

Q They are already bonded?

A Yes.

Q With respect to their employees?

A With respect to their employees, yes, and any outside thefts.

The broker's blanket bond for the smaller cities is \$2,000, and for the towns it is \$1,000.

The reason we gave the alternative of securities insurance or fidelity insurance was because the insurance companies will not issue an insurance blanket bond for an amount of less than ten thousand dollars, so that those in the smaller cities and towns must take out the securities insurance and the fidelity insurance.

The broker's blanket bond covers both of those, in one piece.

Q That is in as an exhibit, I believe (indicating)?

A Then we require a letter from the individual applicant, and each partner and officer of the applicant who will trade in securities, stating that

he has read the Broker-Dealers' Act, 1947, and the regulations thereunder, and the special rulings and requirements of the Board, and that he is prepared to abide by them.

All individual applicants for membership and all partners and officers who will trade in securities on behalf of a member, shall appear before the Membership Committee, which shall make its recommendation to the Board.

And before the Board of Governors approves or disapproves of the applicant, we send a letter to the Ontario Securities Commission, if the Board approves, stating that they grant membership, if the Securities Commission sees fit to grant registration as a broker-dealer.

In connection with the broker's blanket bond, there was one thing we thought of that would be possible if a member of the Association has taken out a blanket bond for a period of one year, and then dropped it. So we have included in the questions in our application form which is by regulation, which requires them every year when they renew their appli-

cation, to set out the broker's blanket bond, or the security or fidelity insurance which they carry.

BY MR. JOLLIFFE:

Q That would be annually?

A Yes.

Q I do not want to destroy the continuity of Mr. McTague's questioning, but I did have a number of questions about these bonds.

MR. McTAGUE: Anytime, Mr. Jolliffe, that either you or any member wants to question the witness, please feel free to do so.

MR. JOLLIFFE: Yes, but sometimes it results in a little disorder.

MR. McTAGUE: To be perfectly frank, we are generally following chronologically the events in the Association, so it does not make much difference.

BY MR. JOLLIFFE:

Q You have now reached the point, Mr. Wismer, that when this matter was first brought to our attention, there were a number of questions asked by members

of this Committee which it was thought at the time could be better answered by yourself.

Do I understand there is an alternative bond? There were two submitted to us. I think they are exhibits. One appears to be a broker's blanket bond, and the other a fidelity bond.

A There was another form which I turned over to one of the solicitors of the Ontario Securities Commission in connection with the securities insurance. The alternative to the broker's blanket bond is securities insurance and a fidelity bond, or fidelity insurance.

Q This exhibit (indicating) is the blanket bond, and as an alternative, it has the out-of-town member who can take out a fidelity bond, and also securities insurance?

A The way the regulation is worded, anyone could take out the alternative of securities insurance and fidelity insurance, but when you take them out separately, they are much more expensive. Consequently, the dealers in the larger centres will have taken out the broker's blanket bond.

Q Will you explain to us the coverage on these

bonds?

A They may take out the broker's blanket bond, in what they call the "strip type", which covers theft and defalcations by employees, and theft by people outside the offices.

Q Now, with respect to that coverage, who is protected? The clients?

A The client is not protected on this bond. It protects the members of the Association.

BY MR. DOWNER:

Q No protection for the clients?

A Let me put it this way, Mr. Downer. The public interest is brought into this for this reason, that the insurance companies screen these people, and I have reason to believe that some have been turned down, and if they cannot get a broker's blanket bond, they will no longer be able to remain members of the Association.

By the same token, if the insurance company, in their screening, is not satisfied with the employee, all they have to say to the employet is, "Get rid of that employee, or these employees, or we will not issue

the bond to you."

The Investment Dealers Association of Canada requires their members to carry a broker's blanket bond. The Toronto Stock Exchange requires the same thing.

So, in addition to the protection to the member against the loss, which may force him out of business, it is also a protection to the public from the fact that the insurance companies screen them.

BY MR. JOLLIFFE:

Q And I suppose also it might prevent the broker-dealer from becoming insolvent?

A Only on the question of defalcation or theft.

Q That is what I am referring to.

A Yes. Some of them add riders to these bonds beyond the strip type insurance against forgery, against the sale of stolen securities, but, of course, that adds to their premiums.

I understand that the price per year for a broker's blanket bond is in the neighbourhood of \$140.00, that is, a ten-thousand-dollar broker's blanket bond.

We have one member of the Association who told me he carries \$125,000 broker's blanket bonds.

Q What is the other coverage, apart from what you have mentioned?

A An alternative coverage is the securities insurance which covers against theft by outsiders, and fidelity insurance, which covers the fidelity of employees.

Q They are both covered in the blanket bond, are they not?

A Yes, that is correct.

Q And the effect of this coverage is to repay to the broker-dealers, losses he may suffer by reason of the defalcation or theft of securities, and similar losses?

A That is one effect. The other effect is to have the insurance companies do the screening of our members and associate members.

Q Is it any worse than a fraud by employees at the expense of a client?

A No.

BY MR. DOWNER:

Q I do not think this goes nearly far enough. Employees of a house could sell stock fraudulently to clients, and the client has no come-back whatever.

The bond does not cover him.

MR. McTAGUE: They cannot get a bond for that.

MR. GRUMETT: Some years ago, did they not have one of a similar nature?

MR. McTAGUE: No. You are referring to the Securities Act, and it was specifically set out in that Act, that the proceeds were made available for a certain length of time. That was a bond by a bonding company in favour of anybody in the public. It was made available to answer judgments in fraud, under the Securities Act itself.

THE CHAIRMAN: It was simply a bond given by the broker-dealer to the Commission?

MR. McTAGUE: That is right. So there was a bond on negotiable securities.

MR. JOLLIFFE: Yes. I think it is the bond the distributors have to give to the Milk Control Board.

MR. DOWNER: Do they still have that, in the Securities Act?

MR. McTAGUE: No.

MR. DOWNER: We should have. We should have something to protect the clients.

MR. JOLLIFFE: That was removed when? About four years ago?

MR. McTAGUE: I think it was in 1949.

THE CHAIRMAN: I think Mr. Lennox' view was that it did not serve much useful purpose.

MR. McTAGUE: It never did.

MR. DOWNER: In other words, the broker-dealer cannot be gouged, but the public can be.

THE WITNESS: No, Mr. Downer. I do not want you to gain that impression. We all carry insurance on our automobiles, because there is the possibility of getting into an accident. We feel that all our members should carry insurance on their businesses, so if one of their employees becomes dishonest, it will not force the member out of the business; he would be repaid by the insurance company.

Entirely additional to that, the insurance companies are careful to whom they issue these bonds.

BY THE CHAIRMAN:

Q It raises the standard of the broker-dealers, because a broker-dealer with a bad reputation would have difficulty in getting a bond?

A Yes.

MR. McTAGUE: Mr. Downer, during my time, when the bond was in effect, there never was a single suit brought about it at all. There never was a single case in the time I was in office brought on this, as far as I can recall.

I think Mr. Lennox possibly had in mind something else. There just was not any suit on it.

THE CHAIRMAN: It had the effect of tying up that much capital, which the broker-dealer could usefully use in his business?

MR. McTAGUE: That is right. As it worked out, it was nothing but a theoretical protection, and nobody was actually protected. Nobody brought suit for fraud, and nobody claimed against it, that I know of.

BY MR. JOLLIFFE:

Q Mr. Wismer, I do not want to quibble about

this, but does not this particular type of bond invest a greater power in the bonding company? In effect, they can decide who can stay in this business, and who will not.

A There are many bonding companies.

Q You know the question they always ask, "Has your application been turned down or cancelled at another time by another company?"

THE CHAIRMAN: They always have this protection; if a man feels he is unjustly dealt with by the bonding company, he can always apply to the Securities Commission, and the Securities Commission has the power to license him, if they think it is a fair case.

THE WITNESS: That is true.

THE CHAIRMAN: Somewhat similar to the provision in the Highway Traffic Act, as to insurance. If a person is convicted of a certain type of offence, his license is cancelled, unless he can show that he is able to get coverage by an insurance company.

MR. JOLLIFFE: It puts him at the mercy of

somebody who may or may not have good reason for denying him coverage. The trouble is that with these private companies, they act on confidential information, which is not admissible as evidence.

THE CHAIRMAN: They always have the right to go to the Securities Commission.

THE WITNESS: We must do everything we can to endeavour to increase the standard of our own Association.

MR. JOLLIFEE: I quite agree with you, but I think it is a responsibility which has to be accepted by your Association and the Securities Commission. I do not think that power should be passed to so many other people.

THE CHAIRMAN: I do not know that that is quite the effect of it. It amounts to this; they are making use of a special experience and skill, and the bonding companies are so accustomed to dealing in matters of this kind, certainly it is evidence of an attempt to improve the standards of the members. Whether it goes that far or not, might be a question.

MR. JOLLIFFE: I agree with all that in principle, but it is not safe to assume that the standards of the bonding company are all that they should be.

MR. McTAGUE: It is putting the broker-dealers on the same basis with respect to insurance, as the I.D.A. and the Toronto Stock Exchange.

MR. JOLLIFFE: I realize that, Mr. McTague.

BY MR. HOUCK:

Q Have you any idea of how many of them will have trouble getting these bonds?

A From the number outstanding, 88, it looks as if some of them will have difficulty.

BY MR. JOLLIFFE:

Q Did you not say that some of them were turned down?

A There again, you hear so many rumours.

BY MR. GRUMMETT:

Q Did not Mr. Lennox say that he knew of at least

one who had refused to renew his registration or license, because he was not able to get a bond.

A That is what I heard, but I have no proof of it. The bonding companies keep these matters very confidential.

MR. JOLLIFFE: Oh, yes, no doubt about that.

THE CHAIRMAN: Shall we adjourn now until 2.30?

MR. JOLLIFFE: Yes.

---The witness temporarily retired.

---Whereupon the further proceedings of this Committee adjourned until this afternoon at 2.30 o'clock.

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A F T E R N O O N S E S S I O N

Toronto, Ontario,
Wednesday,
August 29, 1951,
At 2.30 o'clock p. m.

- - -
--The further proceedings of this Committee reconvened pursuant to adjournment.

--All parties present (excepting Mr. Janes).

--Same appearances as heretofore noted.

- - -
THE CHAIRMAN: We will now resume.

MR. HOUCK: Mr. Chairman, before we resume with the evidence of Mr. Wismer, I wonder if we could have a short discussion about when this Committee will next meet? Apparently the month of September is going to be out.

THE CHAIRMAN: That seemed to be the impression when we last discussed the subject. There is the meeting of the Bar Association on the 11th. The session of Parliament begins on the 24th. Therefore, that is a fairly full month for most of us. What about the month of October? The Royal tour in Toronto will be on the 5th or 6th?

MR. JOLLIFFE: The House meets on the 24th.

The following week is clear except for the Royal visit.

THE CHAIRMAN: Would we be safe in leaving this question until the House meets, at which time we would all be here?

MR. JOLLIFFE: In the case of Mr. Grummett that might involve a 1500-mile trip.

MR. GRUMMETT: You mean after the session?

THE CHAIRMAN: No; I mean if we are all here at the session we will know better then how we can fit some time in, in October, perhaps better than we do now.

MR. JOLLIFFE: Yes.

MR. GRUMMETT: We can see how October "stacks up" for the rest of the Committee. For myself, I think I am all right during the month of October.

THE CHAIRMAN: I have forgotten the exact dates, but is it during the first week of October or during the second week of October that the Royal tour arrives?

MR. HOU : Arriving at Niagara Falls on the 7th. The next day is Thanksgiving Day.

MR. JOLLIFFE: The session begins on the 24th. The following Monday would be the 1st of October. Could we not meet the first three or four days of that week?

THE CHAIRMAN: I would think so. I think that would be suitable to me.

MR. JOLLIFFE: What about the first four days of that week? I am not insisting on it but there is some advantage of knowing ahead of time.

THE CHAIRMAN: Yes; so we do not get otherwise engaged. Suppose we say that?

THE SECRETARY: The 1st of October falls on a Monday. I have, on this little calendar, a black square around that date. Thanksgiving Day is definitely the 8th. Monday is the 1st, Tuesday is the 2nd, of October.

MR. GRUMMETT: We can let it stand that we most likely will sit on the 1st, 2nd, 3rd and 4th of October. That would not conflict with anything. The Royal visit occurs on the 5th and 6th.

THE CHAIRMAN: So, we will all be "raring to go."

MR. JOLLIFFE: I favour that. All of the Committee will be here.

THE CHAIRMAN: The whole Committee will be here for the session the week before.

The notices had better be sent out in the usual way, so it will be on the record. I might say, Mr. Janes is not present.

There is no reason why we should not proceed now.

WILLIAM M. WISMER, a witness previously heard and now recalled, who having already been sworn, continues his testimony as follows:

MR. McTAGUE: Mr. Jolliffe, did you have some questions?

MR. JOLLIFFE: With respect to the matter we were discussing this morning, the new Stock Exchange requirements, I think it was made clear by Mr. Lennox. The witness probably was not here, when he did so, but Mr. Lennox said at page 2638:-

" I think I might briefly refer to what the Toronto Stock Exchange has adopted as its policy to try and control and correct this situation.

This will have a bearing on our administration, too.

They will not permit an option agreement to cover more than one million shares at a time, and that the successive increases shall not be under 5¢, and when they limited the option agreement, or the underwriting agreement, to one million shares, they hold back a sufficient number of shares for future financing, if the property shows sufficient merit.

BY THE CHAIRMAN:

Q. Is that not pretty well the key to the whole situation? As long as you have sufficient un-issued shares remaining in the Treasury, which are not tied up under option when the mine is proven, you have something to work on."

There is no answer.

"MR. JOLLIFFE: I think that is a vital point, whether there is anything left in the Treasury, because if there were Treasury shares still un-issued, and the mine was a very hopeful one, then obviously the company could proceed to sell the shares themselves.

THE CHAIRMAN: Without any difficulty; probably through the Stock Exchange.

MR. JOLLIFFE: Yes; and probably at a much higher price.

THE WITNESS: I think this is very important, I think it is half the battle --

THE CHAIRMAN: Then it ceases to be 'promotion'.

THE WITNESS: There is a policy on the Stock Exchange. We are trying to educate the people who file with us along the lines, because we say, 'If you are not successful, you come to the point where you wish to list on the Stock Exchange, and you will be confronted with difficulties, unless you adopt this policy at the outset.'

BY MR. JOLLIFFE:

Q. That is an interesting point, and I am glad you raised it. Are you accepting for filing any issues which have disqualified themselves in advance for listing -- so

(PAGE 3304 FOLLOWS)

to speak?

A. No, they come to us first and they list afterwards.

Q. Yes, I know, but I would hope that you would not accept for filing any scheme which would make the company's shares ineligible subsequently for listing on the Stock Exchange.

The reason I say that is that the investors have a right to expect that if the enterprise is hopeful, it will be listed eventually."

There was some further discussion along that line and then Mr. Lennox referred to the date of this new policy of the Stock Exchange. Mr. Lennox said at page 2641:

"A. The Broker-Dealer does not know about, because I hope I have an opportunity of getting together with the Broker-Dealers."

This is a question by Mr. Jolliffe:

"Q. Surely they know the requirements of the Toronto Stock Exchange?

A. Not necessarily.

Q. It seems to me they should. It seems to me if a Broker-Dealer does not know the

requirements of the Stock Exchange, he is not competent to be a Broker-Dealer.

MR. GRUMETT: He is not fair with the public.

THE CHAIRMAN: Well, I do not know that that is so."

A little further down, Mr. Lennox said:

"THE WITNESS: Mr. Jolliffe, this is an absolutely new thing. It is dated September 1st, 1950. There is some mistake about that. It was only cleared through the Commission about a month ago, and it is not in force yet. They have here 'September 1st, 1950,' but I think that is in error; I think they mean 'September 1st, 1951,' when it will become effective.

As soon as we got the Broker-Dealers together, they will be instructed along these lines. But the Registrar is already instructing individuals to offer prospectuses for filing along those lines."

That seems to be the explanation.

MR. McTAGUE: Yes. I think Mr. Wismer has noted it, to take it up.

Of course, it is not the only way of financing, because, after all, the banks are financing mines after the stock has all been sold. They have done that in more than one case. In other cases, they are selling debentures, and so on, and not hurting in any way, the original stockholders. However, it sounds like a move in the right direction but not the exclusive way of beginning to do it without harming anybody.

I imagine our people would probably fall in with it.

Q Would you not think so, Mr. Wismer?

A Yes, I would.

THE CHAIRMAN: It has this to be said for it, that it holds in reserve a certain block of treasury stock which can be sold by the company. The company can take advantage of whatever the value may be after the original options are all taken up, and can get the bigger share of the benefits from it.

MR. McTAGUE: Yes. It might be considered better in the interest of the shareholders who are already in the company, not to sell more stock.

THE CHAIRMAN: It is always better not to do that. It has the alternative course open, otherwise

it has to increase its capital stock, which is always a cumbersome way of going about something which can really be done in a very neat way, I think, in accordance with this new regulation. I do not know why it should deter people from entering into deals with companies, because they got a sufficient block of stock, anyway.

BY MR. McTAGUE:

Q. Mr. Wismer, will you pick up your narrative and carry on? We have gone on and developed some subjects past the narrative stage, but will you get back to that with which you want to deal next in the order it came before the Board of Governors?

A Yes. From now on it will be fairly rapid because I have covered a lot of points which I have here in chronological order.

Towards the end of 1948, the Board discovered that some members of the Association occasionally were issuing N.S.F. cheques, and also not accepting delivery of securities, on the due date. Of course, they realized if they knew when these cheques were issued, or when delivery on these securities was not accepted, it would assist them in determining whether or not a member of the Association was in a good financial condition. So,

as a result, a regulation was put through that;

"Every member of the Association shall immediately notify the Secretary of the name of any member of the Association who has issued a cheque, payment of which is refused or who fails to accept delivery of any securities on the due date where the securities are presented for delivery and there is no dispute in respect of the securities".

Subsequently that regulation was amended to also include associate members, because we found that some of our associate members had trading accounts with members of the Association, they would sustain a loss on those trading accounts and would not pay the balance.

Now the procedure is that the member advises us, we call the associate member in and, if he does not pay up immediately, we suspend him until he does.

That helps to keep harmony within the Association and is a service to all members as well.

Coming into 1949, the Board of Governors, which had been appointed by the Lieutenant-Governor in Council, was re-elected by acclamation. They carried on, then, till March 1st, 1950.

I have already dealt with hiring away of

salesmen. The Board brought that in at this time.

Another internal problem which faced us was the fact that when the Securities Act of 1947 was promulgated, and the Broker-Dealers' Association came into existence, it had a slight effect on the Investment Dealers Association, because they had quite a number of associate members, but the I.D.A. did not assume auditing responsibilities for those associate members. They paid a fee --

Q Their term "associate member" is not the same as yours -- a salesman?

A No.

Q Will you explain to the Committee what you mean by "associate member" as related to the Investment Dealers Association?

A Yes. An associate member was one who dealt substantially in investment securities, and who, perhaps, was not able to meet the financial requirements of the Investment Dealers Association, but who wanted to be in on their selling groups for government bonds and other issues.

In view of the fact that the Securities Act of 1947 placed a responsibility on the I.D.A. and the Toronto Stock Exchange, and our Association, to audit

accounts of members, the Investment Dealers Association cancelled out their associate memberships.

Consequently, the Broker-Dealers Association got ten or twelve former associate members of the I.D.A., who were actually investment dealers. Once that happened, those former associate members of the I.D.A. were cut off their selling groups, because they had no affiliation with that Association.

We wanted to help them and, as a result, we established a special committee to further the interests of members of the Broker-Dealers Association engaging in the investment business.

We made representations to the Investment Dealers Association. There was not any difficulty at all. They agreed that they would, again, allow their former associate members, who are now our members, to participate in their bond issues, which were sold by groups.

In April, 1949, as I mentioned before, the price spreads committee came into existence.

Another matter which came to the attention of the Board, early in 1949, was the possibility that some members were acting as principal and agent in the same transaction. There was the possibility that the stock was being taken down from the treasury by a

member of the Association, then he might sell it to a member of the public on a spread basis and also charge him a commission.

We sent out a bulletin, therefore, on May 28th, 1949, which included an article cautioning members against acting as principal and agent in the same transaction.

"The Board of Governors wishes to point out that it is not proper for a broker-dealer to act both as a principal and an agent in the same transaction. In other words, when a broker-dealer has a direct or indirect ownership interest in any stocks, or bonds, transactions in those securities should be made as a principal or dealer only. Regarding this matter, members would be well advised to study the provisions of Section 68(i)(a) and (b) of the Securities Act, 1947, and Section 444 and 445(a) of the Criminal Code (Canada) which are set out below. In addition, from a civil standpoint, a customer would have a good chance of success in a law suit."

We have had no difficulty with that since, which has come to my knowledge.

THE CHAIRMAN:

With respect to acting as principal and agent in the same transaction, would that mean the broker-dealer would be selling his own stock to his customer and charging a commission?

A Yes.

MR. JOLLIFIE: Of course, actually, he could not act as the principal and agent in one transaction. He could act as principal and purport to act as agent. Obviously, he cannot be both.

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THE CHAIRMAN: Except that/any transaction around the Stock Exchange, I suppose, he could simply put in an order to sell his stock and put in an order to buy his customer's stock and it might go through the Stock Exchange in that way.

THE WITNESS: The way it worked out, I believe, or what was happening, was that a member of the Association had stock of his own that he had taken down from the treasury. Instead of confirming to the customer "we have this day sold to you as principal," he would confirm "we have this day bought for your account and risk as agent," and show a commission.

Q. That would be really a mis-statement of the transaction?

A Yes.

MR. McTAGUE: Yes. That comes in under the Secret Commission Act of the Criminal Code.

MR. JOLLIFFE: A pretty risky proceeding.

I was rather amused to notice that one broker-dealer tells his client that in view of the fact he was acting as principal, he was not going to charge him any commission.

MR. McTAGUE: In this literature?

MR. JOLLIFFE: Yes.

THE CHAIRMAN: A great concession.

BY MR. McTAGUE:

Q. Mr. Wismer, would you go ahead?

A I suppose that is true.

THE CHAIRMAN: Yes. There is not a misrepresentation made there.

MR. JOLLIFFE: No; I am not suggesting there is anything improper about it, but I found it rather entertaining.

THE CHAIRMAN: Offering a bargain.

THE WITNESS: Coming to the story of the proposed Regulation "D," under the United States Securities Act of 1933, one of the members of the Board of Governors

had a friend who was an Attorney-at-Law in New York City. They had chatted on numerous occasions about the possibilities of security dealers in Ontario getting away from the violation of American laws. The Attorney in New York City pointed out to the member of the Board of Governors that in the United States they had Regulation "A" which permitted only American citizens to sell up to an aggregate of \$300,000 worth of securities by merely filing a letter of notification with the regional office of the Securities and Exchange Commission.

Of course, there was a further requirement that any of the advertising literature used would be submitted to the regional office for inspection.

The Board of Governors had considered this problem of violating American laws before and naturally were very anxious -- and are very anxious -- to find some means of complying with them.

As a result, we invited the New York Attorney to address a panel meeting of the Board of Governors at which I believe Mr. McTague was present. He gave us a general summary of the United States securities laws, he told us about Regulation "A" and he thought that there was a possibility that the Securities and Exchange Commission might promulgate a proposed

Regulation "D," which they had power to do under the Securities Act of 1933.

As a result, the Board of Governors considered the matter on the spot and they instructed the New York Attorney to proceed with a draft of a proposed Regulation "D."

BY MR. McTAGUE:

Q. What is the nature of Regulation "D?" Will you explain it?

A Regulation "D" is very similar to Regulation "A." It would permit the sale by Ontario dealers in the United States of securities up to an aggregate value of \$300,000. by simply filing a letter of notification with the regional office of the S.E.C. It was our hope that they might see fit --

Q And, by attorneying to the jurisdiction of the United States?

A Yes; and by attorneying to the jurisdiction of the United States. Of course, they could go through a registered broker-dealer under the Securities Act in the United States.

As a result, on May 25th, 1949, I received a letter from the New York Attorney, enclosing a draft of the proposed Regulation "D," which I have here.

If the Committee wishes to see copies of this I could have them prepared from this (indicating) or perhaps I have a copy of the office --

THE CHAIRMAN: Have you one copy for filing here? I think that should be sufficient.

MR. JOLLIFFE: I think a copy filed should be sufficient.

EXHIBIT NO. 143:- Regulation "D"
re exemptions, as produced by the witness, Wismere, and is in words and figures, as follows, to wit:

" REGULATION 'D' "

EXEMPTION RELATING TO CERTAIN CANADIAN SECURITIES

ARTICLE I - DEFINITIONS

Rule 494. When Used in Regulation D

(a) The term "Canadian Securities" shall mean any securities issued by an individual who is a resident of the Dominion of Canada, a corporation incorporated in the Dominion of Canada or any province thereof, or any other person organized under the laws of, or having its principal place of business in, the

Dominion of Canada, or any province thereof,
except the following:

1. Securities of investment trusts or
investment companies which are subject to
the Investment Company Act of 1940;
2. Voting trust certificates;
3. Fractional undivided interests in oil
or gas rights as defined in Rule 300, or
similar interests in other mineral rights;
4. Certificates of interest as defined in
Rule 360;
5. Any securities of an issuer so long as
a registration statement of the issuer or
of any person controlling, controlled by,
or under the common control with, the issuer
is the subject of pending proceedings under
Section 8 (b) or 8 (d) of the Act or of an
order entered under either of these sections;
6. Any securities of an issuer if the issuer,
any promoter of the issuer presently con-
nected with the issuer in any capacity, or
any person controlling, controlled by, or
under common control with the issuer (1) has

been convicted within five years preceding the filing of the letter of notification, provided for by Rule 497, of any felony or misdemeanor involving the sale of any security or (2) is subject to an order, judgment, or decree of any court of competent jurisdiction, entered within three years preceding the date of filing the letter of notification, enjoining it or him from engaging in or continuing any conduct or practice in connection with the sale of any security;

7. Securities as to which a registration statement has been in effect in connection with the offering made under this regulation, before (1) the expiration of one year from the date of the last sale made pursuant to the registration statement by the issuer or other person on behalf of or for the benefit of whom the securities were registered or by any underwriter and (2) the effective date of an amendment to the registration statement removing from a registered status all the securities remaining unsold by the

issuer or other person on behalf of or for the benefit of whom they were registered or by any underwriter.

(b) The term "Ontario Securities Act" shall mean the Securities Act 1947, Statutes of Ontario, 1947, Chapter 98 as amended.

(c) The term "offeror" shall mean any issuer of, underwriter of, or dealer in, any of the Canadian Securities defined in (a) of this rule, or any other person who issues, offers or sells any such Canadian Securities.

ARTICLE II - EXEMPTION AVAILABLE TO CERTAIN
CANADIAN SECURITIES UNDER SECTION
3 (b) OF THE ACT

Rule 495. Securities Exempted

(a) Pursuant to Section 3 (b) of the Securities Act of 1933, as amended, but subject to the terms and conditions prescribed by Regulation "D" and the rules contained therein, Canadian securities as defined in Rule 494 which have been registered pursuant to the Ontario Securities Act, offered by, on behalf of or for the benefit of an issuer, are added to the classes of securities exempted as provided in Section 3 (a) of The Securities Act of

1933, provided the aggregate offering price of the following shall not exceed \$300,000:

1. The securities of the issuer proposed to be presently offered by, on behalf of, or for the benefit of the issuer pursuant to Regulation D,
2. All securities of the issuer currently being offered by, on behalf of, or for the benefit of the issuer under Regulation D,
3. All securities of the issuer previously sold by, on behalf of, or for the benefit of the issuer pursuant to offering under Regulation D commenced within one year prior to the commencement of the proposed offering, and
4. All securities of the issuer neither registered nor exempt from registration nor issued in an exempt transaction which were sold by, on behalf of, or for the benefit of the issuer within one year prior to the commencement of the proposed offering.

(b) Pursuant to Section 3 (b) of the Securities Act of 1933, as amended, but subject to the terms and conditions prescribed by Regulation D of the rules contained therein, Canadian securities as defined in Rule 494 which have been registered pursuant to the

Ontario Securities Act, offered by, on behalf of or for the benefit of any person or persons controlling, controlled by or under common control with an issuer are added to the classes of securities exempted as provided in Section 3 (a) of The Securities Act of 1953, provided the aggregate offering price of the following shall not exceed \$100,000:

1. All securities of the issuer proposed to be presently offered by, on behalf of, or for the benefit of such person or persons pursuant to Regulation D.
2. All securities of the issuer currently being offered by, on behalf of, or for the benefit of such person or persons under Regulation D.
3. All securities of the issuer previously sold by, on behalf of, or for the benefit of such person or persons pursuant to an offering under Regulation D commenced within one year prior to the commencement of the proposed offering, and
4. All securities of the issuer neither registered nor exempt from registration nor

issued in an exempt transaction which were sold by, on behalf of, or for the benefit of such person or persons within one year prior to the commencement of the proposed offering.

(c) Notwithstanding the provisions of paragraphs (a) and (b), (1) Securities offered to a single holder of the majority of the outstanding voting stock of the issuer in connection with a pro-rata offering to stockholders, need not be included in determining the amount of securities which may be offered pursuant to this regulation; and (2) Securities exchanged for outstanding securities, claims or property in connection with a bona fide recapitalization or reorganization, need not be included in computing the amount of securities which may be offered pursuant to this regulation otherwise than in such an exchange.

(d) Notwithstanding the provisions of paragraphs (a) and (b), the aggregate offering price of the securities enumerated in both such paragraphs shall not exceed \$300,000. in any period of twelve months.

(e) An offering may be made pursuant to

Regulation D even though it is contemplated that after the termination of the offering an offering of additional securities will be made.

(f) The aggregate offering price of assessable securities shall include the aggregate amount of all assessments legally leviable thereon at the time of the offering thereof or at any time thereafter.

(g) Where securities are offered "at the market", the aggregate offering price thereof shall be computed upon the basis of the market price as established by bona fide sales made on the first day of the offering.

(h) Where securities are offered in exchange for outstanding securities, claims, or property, the aggregate offering price thereof shall be computed upon the basis of the market value of the securities, claims, or property to be received in exchange as established by bona fide sales made within a reasonable time; if there have been no such sales the aggregate offering price shall be computed upon the basis of the fair value, as determined by some accepted standard, of the securities, claims, or property to be received in exchange.

Rule 496. Exemption Not Available to
Offeror if Unregistered Dealer.

If any offeror of any of the Canadian Securities defined in Rule 494 is, in fact, a 'dealer' as such term is defined in the Securities Exchange Act of 1934, the exemption provided by Regulation D shall not be available, and, such offeror shall not be relieved from the liability which, in the absence of the exemption provided by Regulation D, would be imposed upon him because the security offered for sale, or sold, was unregistered, unless such offeror, is, at the time of each offer to sell, and at the time of each sale, duly registered as a dealer under Section 15 of the said Act.

ARTICLE III - REQUIREMENTS FOR OFFEROR SEEKING EXEMPTION

Rule 497 - Conditions to Exemption and Relief from Liability for Non-Registration.

(a) The exemption provided by Regulation D shall be available, and an offeror of any of the Canadian Securities as defined in Rule 494 shall be relieved from the liability

which, in the absence of the exemption provided by Regulation D, would be imposed upon him because the security offered for sale, or sold, was unregistered, only upon condition -

1. That five days (Sundays and holidays excluded) prior to any offer to sell any securities sought to be exempted hereunder, the offeror, or some person acting on his behalf, shall file with the commission an original and two copies of a letter of notification containing the following information:
 - a) The full names and complete mailing addresses of (A) the issuer; (B) all directors and officers of the issuer; (C) the person or persons by, on behalf of, or for the benefit of whom the offering is to be made; and (D) each principal underwriter.
 - b) (A) The title of the securities proposed to be offered; (B) the principal amount of evidence of indebtedness or the number of shares or other units

proposed to be offered; (C) the price per unit at which they are to be offered to the public; (D) the aggregate amount at which they are to be offered to the public; and (E) the aggregate amount at which all securities of the issuer have been offered to the public within one year by the person or persons filing the letter of notification.

Where securities are to be offered 'at the market' the information required by (C) and (D) shall be given upon the basis of the market price as established by bona fide sales made within a reasonable time prior to the date of filing the letter of notification.

- c) The approximate date of the proposed public offering.
- d) A list of the jurisdictions (States, Territories, or the District of Columbia) in which it is proposed to sell securities. No securities shall

be offered in any jurisdiction not mentioned in the original letter of notification until a supplementary letter stating the name of that jurisdiction has been filed.

However, a statement that all or part of the offering is to be made by use of the facilities of a securities exchange (naming the exchange) shall suffice as to the securities to be so offered.

- e) If the securities are to be offered by, on behalf of, or for the benefit of the issuer, the purposes for which the net proceeds from the securities are to be used.
 - f) The name and address of the registered agent of the issuer in the United States.
2. That five days (Sundays and holidays excluded) prior to any offer to sell any securities sought to be exempted hereunder, the offeror, or some person acting on his behalf, shall file with the

commission three copies of the registration statement for such securities then in effect under the Ontario Securities Act.

3. That each offeror who is not a resident of the United States shall present to the Securities and Exchange Commission a designation of a registered agent in the United States and an express consent to submit to the jurisdiction of the District Court of the United States for the district in which such registered agent resides, in any civil action commenced in such District Court against such offeror under the Securities Act of 1933, as amended, or the Securities and Exchange Act of 1934. In addition, each offeror shall file with the commission a power of attorney acceptable to the commission, properly signed and acknowledged, appointing such registered agent, its agent in the United States upon whom all processes, including original

processes, may be served in any civil section commenced against such offeror under the Securities Act of 1933, as amended, or the Securities and Exchange Act of 1934. There shall be filed with such designation, consent, and power of attorney, the consent of the registered agent, therein named to act as such attorney to receive service of any and all such processes, as well as his undertaking to appear in any such action.

4. The original and two copies of the letter of notification, three copies of the power of attorney required by paragraphs 1, 2 and 3 shall be filed with the Regional Office of the Commission for the Region in which the registered agent named in the consent and designation filed pursuant to paragraph 3 resides.

5. Any change in the matters stated in the letter of notification,

shall be set forth in a supplementary letter of notification, except that no supplementary letter of notification need be filed with respect to a change in the offering price of securities which are being offered at the market.

ARTICLE IV - WRITTEN COMMUNICATIONS,
ADVERTISEMENTS AND RADIO
BROADCASTS.

Rule 498. Filing of written communications, advertisements and radio broadcasts with the Commission.

(a) Three copies of every written communication, advertisement or radio broadcast prepared or authorized by the issuer, any person controlling, controlled by, or under common control with, the issuer, or any principal underwriter of the securities to be offered, which is proposed to be used at the commencement of the public offering under this regulation or intended to be sent or delivered thereafter to more than ten persons shall be filed, at least five (5) days (Sundays and holidays excluded) prior to any use thereof, with the office

of the Commission with which the letter of notification is filed, PROVIDED, that there need not be filed copies of any communication which does no more than identify the securities, state the price thereof, and state by whom orders will be executed.

(Note: The material filed pursuant to this rule is required to be filed solely for the information of the Commission to aid it in the enforcement of Section 17 of the Act, and not for the purpose of enabling the Commission to cite any deficiency in the information contained therein. The failure of the Commission at any time to take action upon any information filed pursuant to this rule does not indicate that the Commission considers the information accurate, complete or not misleading.)

(b) Every written communication, advertisement or radio broadcast, a copy of which is required to be filed with the Commission pursuant to this rule, shall contain a statement in substantially the

following form:

BECAUSE THESE SECURITIES ARE BELIEVED
TO BE EXEMPT FROM REGISTRATION, THEY
HAVE NOT BEEN REGISTERED WITH THE
SECURITIES AND EXCHANGE COMMISSION;
BUT SUCH EXEMPTION, IF AVAILABLE, DOES
NOT INDICATE THAT THE SECURITIES HAVE
BEEN EITHER APPROVED OR DISAPPROVED BY
THE COMMISSION OR THAT THE COMMISSION
HAS CONSIDERED THE ACCURACY OR COMPLETE-
NESS OF THE STATEMENTS IN THIS
COMMUNICATION.

In written communications and advertisements
the statement shall be set forth on the
first page in type as large as that used
generally in the body thereof.

(c) No written communication,
advertisement, or radio broadcast, a copy
of which is required to be filed with the
Commission pursuant to this rule, shall be
used unless it contains the following
information:

1. The name of the person or persons by,
on behalf of, or for the benefit of whom
the securities are being offered.

2. The number of shares or other units being offered and the amount of underwriting discounts or commission per unit, or, if none, the per unit amount of expenses incurred or to be incurred in connection with the distribution of the securities (estimate if necessary).

3. The aggregate amount of underwriting discounts and commissions or, if none, the aggregate amount of expenses incurred or to be incurred in connection with the distribution of the securities (estimate if necessary).

4. If the securities are being offered by, on behalf of, or for the benefit of the issuer, the purposes for which the net proceeds from the securities are to be used.

Rule 224. Prohibition of Certain Representations.

No written or oral communication used in connection with any offering under this regulation shall contain any language stating or implying that the Commission has in any way passed upon the merits of, or given approval to, the securities

or the terms of the offering, or has determined that the securities are exempt from registration, or has made any finding that the statements in any such communication are accurate or complete."

THE WITNESS: From then on I would like to refer to correspondence, because the matter becomes rather technical.

On July 8th, 1949, we brought Mr. Lennox into the picture and I wrote this letter to him:

"Over a period of the last few months, the Board of Governors has been studying the possibility of members of this Association complying with the Securities Laws of the United States.

On May 18th last, Mr. Hobart L. Brinsmade, Attorney, New York City, addressed the Board on the general subject of United States Securities Laws. He suggested then an attempt be made to have the United States Securities and Exchange Commission promulgate a regulation under the United States Securities Act, of 1933, for the sale of Canadian securities in the United States, which would be similar to the existing Regulation A.

" Regulation A provides an exemption for the sale of American securities in the United States by filing a simple letter of notification provided that the aggregate offering price does not exceed \$300,000.

" The Board of Governors directed Mr. Brinsmade to proceed with the drafting of a proposed Regulation D, a copy of which is enclosed, which was subsequently discussed with the Board by Mr. Brinsmade with Mr. W. Ralph Salter, K.C., and the Hon. C. P. McTague, K.C., in attendance. As a result, Mr. Brinsmade was elected by the Board to take the matter up with the United States Securities and Exchange Commission without committing the Association to anything, and report that Commission's feeling on the matter to the Board for further discussion.

" You will please find enclosed letters from Mr. Brinsmade giving an account of his progress thus far."

This is a letter dated June 24th, 1949, from Mr. Brinsmade to the Chairman of that Committee:

"I want to give you informally, a preliminary

report on my conference with the Securities and Exchange Commission, in Washington, yesterday.

At Mr. Edmond M. Hanrahan's request, I met with the legislative committee of the S.E.C.---"

BY MR. McTAGUE:

Q. Who is Mr. Hanrahan? What position did he occupy at that time?

A He was Chairman.

"---which consisted of the Associate General Counsel, a representative of the Finance Division, the Enforcement Division, and the Broker-Dealer's Division, in order to explore preliminarily as to whether the S.E.C. would promulgate a regulation similar to Regulation D which was presented to the Board of Governors of your Association and passed on by Mr. Salter and Mr. McTague. They had previously submitted this regulation to the Committee for their study together with the copies of the Ontario Brokers-Dealers' Act and the Ontario Securities Act of 1947.

The Committee advised me that they had no difficulty with respect to Regulation D and that it fully covered the situation and

that it would be acceptable to them provided the enforcement of the Act could be worked out in mutual co-operation with the authorities in Ontario and the S.E.C. They stated that if this matter could be worked out, they would be ready to promulgate such regulation immediately. They asked me what provisions I could offer towards working out the enforcement provisions, and I advised them that I had no authority whatever to com it the Broker-Dealers' Association to anything. Then I suggested that they take up their recommendations formally with the Commission and advise me as to whether or not the Commission itself was in accord with their recommendations. They agreed to do this and advise me formally the decision of the Commission reg. rding this preliminary interview.

I agreed that if the decision of the Commission was in accord with the recommendation of the Committee, I would recommend to the Broker-Dealers' Association that a conference be arranged on a higher level with a direct representative of the Commission, Mr. McTague (who was well known and well vested by the S.E.C.), possibly Mr. Salter and Mr. Wismer.

I also stated that we would explore the possibilities of also bringing Mr. Lennox in on the conference. I am waiting now to hear the final word of the Commission on this matter.

I am encouraged about the results and feel that Regulation D can definitely be secured provided a satisfactory round-table conference is arranged at which the various problems between the United States and Ontario are satisfactorily worked out.

This report is informal and preliminary. You may discuss it informally if you like with the members of the Board of Governors. However, it appears to me to be in order to await the final word of the S.E.C. on this matter to be given to me formally, before definitely arranging any further steps. Meanwhile, I would appreciate it if you would keep me advised as to the reaction of the Board of Governors to this preliminary report and the manner in which they desire me to present my formal report. In other words, do they want me to return to Toronto to present the report and to be available to answer any questions of the members

of the Board of Governors, regarding this matter? If so, I shall be glad to comply with their request. I would also appreciate it if you would furnish a copy of this letter to Mr. Wismer for his information."

Then, on June 29th, Mr. Brinsmade sent another letter to Mr. Lampard, the Chairman of that particular Committee, in which he enclosed a copy of a letter to him from Mr. Louis Loss, who, at that time, was Associate General Counsel of the S.E.C. The letter is dated June 28th, 1949.

"The Commission has authorized me to inform you that it would be happy to confer with the representatives of the Ontario Broker-Dealers' Association and the Ontario Securities Commission, in connection with your proposed Regulation D.

Although the Commission is hopeful the conference will produce mutually satisfactory results, it believes it extremely unlikely that it will be able, seriously, to consider the adoption of your proposed Regulation D until the problem of placing Canadian securities dealers on a par with American dealers with

respect to fraud sanctions has been resolved.

I shall expect to hear from you with respect to studying the date for the proposed conference."

In any event, the conference was finally arranged for October 18th, 1949. Mr. Lennox, Mr. McTague, three members of our Board of Governors and I went to Washington, and met with possibly 25 representatives of the Securities and Exchange Commission including the Chairman and two or three Commissioners.

At that conference, many mutual problems were discussed but one of the things which concerned them most was the conflict of law between the United States and Canada. As a result, certain legal points were raised. It was agreed that Mr. McTague would prepare a brief which would be sent to the Securities and Exchange Commission.

I think Mr. McTague has already told you about that.

MR. Mc TAGE: An opinion.

THE WITNESS: Yes; an opinion.

THE CHAIRMAN: That is, an opinion as to the jurisdiction of the Ontario Legislature to deal with

some of those across-the-border transactions?

MR. McTAGUE: Yes; that is right.

Q That was the opinion you mentioned?

A Yes. I might also mention that while we were in Washington we had discussions with Mr. Milton Krohl, who was assistant general counsel for the S.E.C. We pointed out to him that we were most anxious to get concerning evidence/members or associate members of our Association, who might be acting fraudulently by calling on the telephone or by sending literature in to the United States. At that time it was agreed that he would send us cases so that the Board of Governors would have an opportunity to deal with them.

On November 22nd, 1949, I wrote a memo which I read to the Board of Governors:

"Mr. Brinsmade telephoned from New York City and stated that Mr. Krohl, Associate General Counsel of the S.E.C., seemed most anxious to have Regulation "D" promulgated by the S.E.C. However, there is a Federal law in the U.S. making it a crime for a Department of the U.S. Government to negotiate with a foreign government except through the proper government channels and Mr. Krohl and Mr. Brinsmade have

decided to put it on the basis of negotiating with each other as individuals. I pointed out to Mr. Brinsmade that the Broker-Dealers Association of Ontario was not a branch of any government.

Mr. Krohl has told Mr. Brinsmade that if a definition of fraud can be agreed upon which will be enforced by the Association as 'Unethical conduct' then he feels that the proposed Regulation D will be promulgated by the S.E.C. Mr. Krohl says that criminal fraud under the Criminal Code of Canada (i.e. Obtaining Money by False Pretenses with False Pretenses Defined in the Code) does not go far enough. He wants a broader definition by which the Association would recognize fraud in the 'Common Garden Variety' or to be more technical, as established by the English Common Law in Civil cases.

Mr. Brinsmade suggests that the Association have a definition of fraud drafted in the immediate future which he will take up with Mr. Krohl along with the brief on the legal questions asked by the S.E.C. which Mr. McTague is preparing."

After discussing the definition of "fraud" which we

could enforce, with Mr. McTague it was decided that we had a very broad definition which could apply under the definition of "Unethical conduct".

"Unethical conduct shall include any representation, written or oral made with the intention of effecting a trade in a security, which is false, fraudulent, or misleading."

BY THE CHAIRMAN:

Q. That is, that statement, itself, whether or not it resulted in a transaction in the securities, would be "unethical conduct" under your definition of the term.

A Yes; whether it was written or oral.

MR. MCTAGUE: It only goes partially to the very complete definition. There has to be damages.

THE CHAIRMAN: Yes; quite. With respect to the statement, itself, although it might not be actionable in a Civil Court on a question of damages, unless somebody did part with some money, or something. Under these circumstances you would accept that definition as reasonable?

THE WITNESS: Yes.

MR. JOLLIFFE: In a disciplinary case --

MR. MCTAGUE: Yes.

MR. JOLLIFFE: ---that might be a very vital distinction.

THE CHAIRMAN: A very vital distinction.

THE WITNESS: But, what we were prepared to do was to enforce that for the purposes of complaints which were received from the S.E.C. because we wanted to get Regulation "D" in return. The idea was that we would have made it compulsory for the members of all associations, to abide by Regulation "D" and sell securities under that in the United States.

BY MR. JOLLIFFE:

Q. Do you mean that the intention was to insist that members of your Association avail themselves of the procedure which was to be provided under Regulation "D"?

A. Yes.

Q. And, failing to avail themselves, they would be disciplined?

A. Yes.

Q. Was that the intention?

A. Yes.

MR. McTAGUE: If they sold in the United States.

MR. JOLLIFFE: Yes.

THE CHAIRMAN: That would provide them with a legitimate channel of selling in the United States, with sanctions, and any sales which were made outside of that provision would be subject to disciplinary action.

MR. JOLLIFFE: And I suppose any solicitation, would you not also say?

THE CHAIRMAN: Yes.

BY THE CHAIRMAN:

Q. Would that not be so?

A Yes. You see then the securities dealers in the Province of Ontario would have been on a par with American securities dealers in being able to take advantage of the same type of legislation. They would not have to go through the long form of difficult filing.

MR. JOLLIFFE: This may be just a little technical, but, before you read that, would the witness or Mr. McTague explain precisely what was meant by the proposition that dealers should attorn to the jurisdiction if they got registration?

THE WITNESS: I will let you deal with that,

Mr. McTague. You gave the opinion on that matter.

MR. McTAGUE: I am abstracting it from a fairly long draft, which includes the whole regulation. Dealing with the exemption, this is what is proposed and what has been worked on more or less in common.

"The exemption provided by Regulation D shall be available, and an offeror of any of the Canadian securities as defined in Rule 494 shall be relieved from the liability, which, in the absence of the exemption provided by Regulation D, would be imposed upon him because the security offered for sale, or sold, was unregistered, only upon condition ---"

and then there are a number of conditions which follow. Among them is Condition (1)(d), which provides, when the notification was sent in -- they call it a "letter of notification" -- it would include:

"A list of the jurisdictions (states, territories, or the District of Columbia) in which it is proposed to sell securities. No securities shall be offered in any jurisdiction not mentioned in the original letter of notification until a supplementary letter stating the name of that jurisdiction has

been filed."

Then it was made obligatory to file the name and address of the registered agent of the issuer in the United States; so, we had to appoint an agent -- similar to the Extra-provincial Corporations Act, as far as that is concerned.

MR. JOLLIFFE: For what purpose?

MR. McTAGUE: "That each offeror who is not a resident of the United States shall present to the Securities and Exchange Commission a designation of a registered agent in the United States and an express consent to submit to the jurisdiction of the District Court of the United States or the district in which such registered agent resides, in any civil action commenced in such District Court against such offeror under the Securities Act of 1933, as amended, or the Securities and Exchange Act of 1934. In addition, each offeror shall file with the Commission a power of attorney acceptable to the Commission, properly signed and acknowledged, appointing such registered agent, its agent in the United States upon whom all processes, including original processes, may be served in any civil action commenced against such offeror under the Securities Act of 1933, as amended, or the Securities

and Exchange Act of 1934. There shall be filed with such designation, consent and power of attorney, the consent of the registered agent, therein named to act as such attorney, to receive service of any and all such processes, as well as his undertaking to appear here in any such action."

That is a straight term.

MR. JOLLIFFE: It seems to be confined to civil actions.

MR. McTAGUE: Oh, yes. It was not intended to be any civil action which would arise as a result of infractions of either one of the securities acts, the Act of 1935 or the Act of 1934 -- which put our people upon exactly the same basis as the Americans were, as far as that is concerned. Attornment in a criminal action would not be any good, anyway.

MR. JOLLIFFE: No; but they would be on the same basis, or footing, as American broker-dealers, except for that aspect of the matter, that is, except in the matter of criminal prosecutions.

MR. McTAGUE: That is right.

THE WITNESS: The next letter I have is dated January 20, 1950, which Mr. Brinsmaid mailed to me. It reads:

" I met with Mr. Milton Krohl of the Securities and Exchange Commission yesterday, and delivered to him the legal opinion of Mr. McTague. Mr. Krohl stated that the opinion adequately answers the various questions which had been raised by the Commission at their meeting with Mr. Lennox at the representatives' of the Ontario Broker-Dealers Association.

" I discussed confidentially and off the record the status of our application for regulation "D". Mr. Krohl was very careful to point out what he expressed to me was his personal opinion and could in no way bind the Commission. However, he stated that the Commission was going to request through the United States State Department an extradition treaty which would permit extradition for crimes involving any representation, written or oral, made with the intention of affecting a trade in a security which is false, fraudulent, or misleading.

" This is the language of the regulations

made on page 7 of the Broker-Dealers Act of 1947. He asked me if such a treaty would have the opposition of the Broker-Dealers Association and I told him that I was not authorized to make a statement in this regard. Mr. Krohl then stated that in his opinion if such a treaty were accepted in Canada there would be no impediment to granting a regulation 'D', although he would not state that regulation 'D' in the exact form presented by us would be acceptable. I then suggested that he speak with the Commission to ascertain whether they would be interested in discussing the exact type of regulation 'D' which would be promulgated in the event the type of treaty stated above was accepted by Canada. He agreed to discuss the matter with the Commission and let me know their attitude on the whole question. He told me that he is working at the present time on the Securities and Exchange budget for Congress which would keep him occupied until next week. Immediately after that time he would be in touch with me and discuss the problem in detail.

" This report is for your confidential

information. My general impression of the Conference was that the Securities and Exchange Commission has decided in favour of the regulation but feels that to save face it must obtain some sort of Fraud Treaty. They are not going to propose any treaty requiring extradition for violations of The Securities Act or any Blue Sky Law, unless such violations come within the definition of fraud set forth above."

This letter is dated February 3, 1950, and came from Mr. Brinsmade to me.

" I had a telephone call today from Mr. Milton Krohl and he told me that he had discussed the matter with the Commission and the Commission had stated that if a treaty were entered into along the lines we discussed at the last meeting they would not see any impediment to granting regulation 'D'.

" He said that we must realize that they couldn't commit themselves to any particular regulation 'D' and could give Canadians no greater rights than they gave Americans. He then said that the Commission would not commit itself to any action in advance and was not

authorized by law to so commit itself. However, he said that they expressed themselves as being in favour of such a regulation if a treaty of some kind were given."

As soon as we realized that they must have an extension to the existing extradition treaty or some type of extradition treaty it was out of our hands. We could no longer discuss it, because extradition is a Federal matter.

As a result, the matter was talked about and finally the Board of Governors decided that I should go down to Washington, in June, 1950, and talk with Mr. Krohl and see if there was not some way of saving the situation.

I went there on June 16 and he advised me that the S.E.C. wanted extradition in some form --- the strongest they could get; they were willing to work it out on the basis of a deal. Personally, he was not adverse to:

- (a) a treaty which would not be retroactive;
- (b) which would quash all indictments, including De Palma's, although that would be a bitter pill for them to swallow ---

BY MR. McTAGUE:

Q You were not seeking any preferred treatment for

De Palma?

A This was his summation of the situation.

(c) promulgate a regulation 'D' to put Canadians on the same legal footing in selling securities in the United States as the Americans;

(d) try to work the treaty out in regard to the common garden variety of fraud.

He said he had written all the briefs submitted to the Canadian Government and the treaty was turned down by Canada before. He said he had been in touch with the Attorneys-General of some of the Provinces and they felt that they had been led down the garden path in opposing it previously. All of the Attorneys-General had opposed it. He said he had done some work on a new treaty with a friend of his in the United States State Department, but they were so busy with Communists and perverts that now it was hard to get anything done.

I asked Mr. Krohl why we had not received any complaints from him regarding members of our Association and he admitted that they had not been sent. He said that one of the reasons was because the cases went to secret indictment, and they did not release the evidence; but he said he would try to send along two or three cases in future, and we could rest assured they would be "hot ones".

BY MR. McTAGUE:

Q Did you get any?

A No; we did not get any.

Q None was sent²

A We did not get any at all.

THE CHAIRMAN: We will now have a short recess.

-- Whereupon a short recess was had.

-- Upon resuming:

-- The Chairman retired and the gavel was assumed by Mr. Villeneuve, Acting Chairman.

BY MR. McTAGUE:

Q Go ahead, Mr. Wismer.

A There was one thing which I noticed while we were proceeding with the negotiations for regulation "D".

In November, 1949, about a month after the joint meeting down in Washington with the representatives from the S.A.C., the fictitious orders were issued by the United States Post Office Department. You will recall that I went into that previously, on what the fictitious orders were based.

BY MR. JOLLIFFE:

Q May I interrupt? It may be more convenient for you to give this information later, but perhaps you could give it now. Those fictitious orders in some cases

followed after fraud orders --- did they not?

A I cannot answer that without checking the records, Mr. Jolliffe.

Q Do you know of any case or cases in which there was no fraud order first as a foundation for it?

A Yes. I know of one, off-hand, where there is no fraud order to this day.

Q No fraud order against the person involved, whatever the name might be?

A Against the firm or either of the partners in the firm.

Q That is the information I wanted to get, because from what has been said previously, one would gather that fictitious name orders are made on the basis that there is a change of name --- and only on that basis. While that may have happened --- and I would be interested to hear of cases in which it has happened -- I noticed some which followed after a fraud order.

A I will get that information for you.

The wind-up of the proposed regulation 'D' is included in a letter dated April 16, 1951, again from Mr. Brinsmade. It says:

"Last Tuesday, April 10"

that is, of this year,

"..... I stopped in to see Mr. Milton Krohl

head of the Enforcement Section of the United States Securities and Exchange Commission. My purpose was to find out what progress had been made with respect to the offer of the Broker-Dealers Association to cooperate with the Securities and Exchange Commission in preventing the sale of unregistered securities from Canada into the United States. I went at the request of Mr. R. S. Lampard."

Mr. Lampard was the Chairman of that committee previously.

" Mr. Milton Krohl said that the continued sale of unregistered securities in the United States indicated that Canadians wanted 'to indulge in economic warfare with the United States', and that for his part he was perfectly willing for the United States to wage such warfare, since he was convinced the United States would win that kind of war, as the Canadians could not get along without the United States.

" He told me that he understood that he was being attacked for failure to carry out his agreement to send cases to the Broker-Dealers Association which were of such a nature as to require disciplinary action. He

said that he did not remember making such a promise, but that he was completely impervious to any attacks made against him by the Broker-Dealers Association.

" He told me that he had originally felt that the proposed regulation "D" would be promulgated by the Commission, but under present circumstances he did not feel there was any chance of this being done."

BY MR. HOUCK:

Q That is a rather an astounding statement. I was wondering how you, yourself, felt, Mr. Wismer. Do you think they really wanted to cooperate or were they just jockeying for position?

A I still think that they really wanted to cooperate.

BY MR. GRUMETT:

Q What was the reason for the breakdown in the negotiations, then, Mr. Wismer?

A Negotiations, of course, came to an end with the mention of an extradition treaty, which we could not discuss.

BY MR. HOUCK:

Q Because you felt it was out of your jurisdiction?

A Completely.

BY MR. JOLLIFFE:

Q Does it follow that you could not discuss it? You would, of course, have no authority to negotiate a new extradition treaty, but why does it follow that you could not discuss it?

A Perhaps I should say that the Board of Governors felt that there was no point in discussing an extradition treaty.

BY MR. GRUMETT:

Q Could the Board of Governors not have carried on some correspondence or negotiations with the Federal authorities, pointing out the difficulties they were up against and suggesting amendments to the Extradition Act --- in other words, lend their weight to any effort to have the Act revised?

A The difficulty was that towards the end of these negotiations members of our Association ran into difficulties with the Dominion Post Office Department.

Q That is, they had not a very good status down at Ottawa then?

A No, although those prohibitory mail orders were subsequently lifted by the Postmaster General.

MR. McTAGUE: I had always the feeling, if I may be permitted to introduce this, Mr. Grummett, that the negotiations started on the basis of one matter.

We are talking about proposed regulation "D". I do not think it was entering people's minds --- that is, the business of extradition --- or was connected with that proposal of the very early stages; I mean, entered into the discussions which were taking place between Mr. Brinsmade, for the Broker-Dealers Association, and Mr. Krohl and Mr. Loss for S.E.C.

At that conference, to which reference has been made, and at which I was present, on October 18, 1949, after there had been a full discussion for, my guess would be, a matter of close to two hours --- I know I was making representations, and being questioned, myself, for an hour, all told --- there was no mention of extradition at all until that first general discussion was over. Just at the end the note of "extradition" was introduced.

I think from that time on that was foremost in their minds; and, as indicated in the correspondence here, except for that last letter of Mr. Krohl's, the idea seemed to be that if something in the nature of extradition was worked out, which was perfectly satisfactory to them, they were perfectly prepared to go on

with regulation "D". I have always had the feeling, too, that the reason the cases they promised to send up were not sent up was if we were able to take action of a suitable character, it, perhaps, was evidence which was not going to be too helpful, as far as they were concerned, in regard to extradition. We never got it.

MR. GRUMMETT: There is another angle, which was explained, I think, in one of those letters. The secret indictment had been laid, and it was, therefore, impossible for those officials to send the information here. Once a secret indictment was laid it was impossible.

MR. McTAGUE: I think they could get over that all right. There is no necessity to keep an indictment secret, you know.

MR. GRUMMETT: It might be of some advantage.

MR. JOLLIFFE: Could they not send up some of the evidence without disclosing whether or not there was an indictment pending?

MR. McTAGUE: Of course.

MR. JOLLIFFE: One matter I do not entirely understand about the question of extradition, and which

surprises me a little is that American enforcement officers should put so much faith and confidence in the processes of the courts because, from my observation, the processes of their courts are not as speedy as ours in criminal matters as well as in civil matters --- and not always too effective.

MR. McTAGUE: I do not know whether they had gone seriously into the procedural side or the sort of thing which would be connected with extradition, to which you refer, in the early stages, by McEntire's reference to Lamar, which seems to indicate they studied it then rather than recently; but the first treaty they presented in 1942 was so far a case of them over-reaching themselves in what they were asking for, that I do not think anybody was surprised that not a single Attorney-General of the provinces would "go for it". It was not a reasonable proposition. I think you and I have agreed on that before.

Following that, in this conference to which I have made reference, just towards the end a reference was made to "extradition" and it was upon that occasion that I made some reference to the former treaty which they had attempted to get, and had ratified over here, and put the proposition that if they were to proceed along the line of extradition, it had to be

upon a reasonable basis and if they wanted to keep it on the basis as it was before, in my opinion, it would never go through here. From that time on, at least after that, I think they modified their views.

Of course you can even see that in a letter which has been just read here from Mr. Brinsmade, reporting that Mr. Krohl was ready to accept, for the purposes of extradition, the definition of "fraud" as contained in the Broiler-Dealers Code of Ethics, in the regulations. We would not agree to do that, for he wanted to get something to which he was not entitled.

As I point out, it is an entirely different proposition. That definition is for the purpose of dealing, in a disciplinary way, with people within an Association. It is a long cry from what we have in mind when we think of "fraud" of a criminal sort, for sure.

MR. JOLLIFFE: I still do not understand why they pin their hopes almost exclusively on extradition. It seems to me rather a frail reed.

Mr. McTAGUE: I agree with you there. Naturally, when it comes to the question of procedure, they seek to extradite somebody from here, they have to make a case before an Ontario County Court Judge along the line of the particulars to which you made reference

in the Lamar case, but, as you say, when you get over to the American side, I think they will find before they are at it very long it will be anything but automatic.

MR. JOLLIFFE: The fact that they have several hurdles to get over in prosecutions in securities cases, demonstrates that they are not very easy unless they are clear-cut cases. They would have to get over the hurdle of the County Court Judge here ---- possibly the heaviest hurdle. Even after they have succeeded in extradition, they will have to get a conviction and perhaps have to succeed on appeal in several of the states. It will involve a great deal of trouble and expense.

MR. GRUMMETT: But, what other way have they of getting at the person of the offender? That is the object of their request for extradition.

MR. McTAGUE: Let me ask you this question, if you do not mind, Mr. Grummett, coming from a person having some experience:

Do you think that the situation has been so terrible, as has been represented to you, in general language, by letter from the S.E.C.? If it has been that bad, why has extradition not been sought? It is not new. It is extraditable now, if it is under certain

sections of the Code --- obtaining money by false pretences, and so on. I do not know --- I was not here --- but I am informed that the Ontario Securities Commission did furnish the S.E.C. with certain information in certain cases which they thought were extraditable under the present law. But, no move was made for extradition.

MR. GRUMETT: It might have been a very trivial offence in the eyes of the S.E.C.

MR. McTAGUE: I would not think so, if my information is correct from the Ontario Securities Commission. If it is a very trivial offence then I think it is nonsense for them to be talking at all about extradition.

MR. JOLLIFFE: I think it was a case in which the County Crown Attorney of the County of York expressed an opinion that the principal was extraditable.

MR. McTAGUE: I think I heard that it was mentioned in something said before the Committee.

MR. DOWNER: Yes; that is right.

BY MR. HOUCK:

Q If we have such serious offenders over here from the United States, I think, if I recall correctly, you repeated Mr. Kroll's statement two or three times

that he would give you evidence, and I think he said the last time it would be "hot". Why did he not give you that evidence if he had it?

A He said that it was difficult for him to turn cases over because ---

Q But, you went out of your way to ask him specifically to turn over some of those cases to you?

A I asked him why he had not sent some up, because we were as anxious to get at fraudulent practises as he was, and he went on to say that it was difficult to do because of the secret indictment and the evidence was secret, but, he said, he would try to send up two or three cases, and I could be assured that they would be "hot".

Q But, that was months ago?

A Yes. That was in June, 1950.

Q 1950?

A Yes.

--- The Acting Chairman relinquished the gavel, which was re-assumed by the Chairman;

BY MR. McTAGE:

Q Have you finished your evidence in chief with regard to that negotiation?

A Yes; I have.

Q If there are no other questions on that, will

you proceed at this time? Will you go on in chronological order?

A I am going back now to June 22, 1949, when the Board of Governors had the proposed regulation "D" under discussion.

Of course, they were anxious not do do anything to offend the American federal securities authorities. A goodly number of our members were stating in all of their literature that they were members of the Broker-Dealers Association of Ontario and the Board was afraid that with literature going into the United States which contained an offer in the way of solicitation, the people down there and the securities authorities might get the idea that the Association was approving some of these illegal issues in the United States. So, consequently, they made a regulation, which was approved, that no member of the Association shall state that he is a member of the Association in any advertisement, circular or pamphlet which contains an offer made by him respecting a trade in securities.

BY MR. JULLIFEE:

Q When was that regulation made?

A It went out to members on June 22, 1949.

Q And, is that still in effect?

A Yes; it is.

Q It has not been observed. You are aware of that?

A It has been observed, I believe, in any literature which contains an offer made by him respecting a trade in securities.

Q I mean, I cited to you yesterday the case of a man who told his American client he was a member of the B.D.A., the Board of Trade, and this, that and the other thing. That was quite a recent letter.

A There is always the possibility, Mr. Jolliffe, that in perusal, the violation of a regulation, or the violation of the law, may be overlooked by the perusing officer. That is one of the reasons, too, why we do not approve it.

Q I suppose in that case if he was not making an offer in that letter he may have been, technically, within his rights?

A Yes.

I am moving on now to September 6, 1949, at which time the Chairman of the Ontario Securities Commission, after a telephone discussion with the Chairman of the Board, sent out a notice to all members of the Broker-Dealers Association, by registered mail:

" Following several discussions with your Board of Governors the undersigned "

that is, Mr. Lennox, the Chairman of the Commission,

"..... agreed as of the 28th of January, 1949, to give your Association an opportunity to control the extent of offerings of securities being made in the United States and other parts outside Ontario. The experiment has not proved satisfactory and it is now mutually agreed following further discussions that the Commission should again exercise its jurisdiction on the same basis as it did before the Broker-Dealers' Act was proclaimed. At least until such time as your Association is able to offer some fair and sound solution to the problem.

" Accordingly the principle laid down in the decision of Canadian Securities dated March 1st, 1948, will be strictly enforced and the scope of the decision will be enlarged to meet existing conditions wherein the size of mailings has been materially increased by including a comparatively large number of Ontario mailings with the possible intent of avoiding the consequences of the decision in question.

" The gist of the decision is that a dealer who devotes his particular efforts

almost entirely to effecting sales outside Ontario should not enjoy the right of registration. It should now be pointed out in view of the increased volume of mailings that a dealer may go through the motions of fairly extensive mailings within Ontario and still in the final analysis be deemed to be devoting almost his entire efforts to effecting sales outside Ontario. However, it may be found that his sales campaign overall is indicative of over-reaching and other high-pressured methods.

" The Commission working in conjunction with your Board of Governors considers this step to be in the best interests of the Association as a whole."

Then, there is the note: .

" A copy of the decision in Canadian Securities may be obtained from the Ontario Securities Commission or from Mr. Wismer of the Broker-Dealers Association."

BY MR. DOWNER:

Q What is the date of that letter?

A September 6, 1949.

As a result of that, the Chairman of the Board of Governors and I attended on the Chairman of the Securities Commission. I drafted a memorandum of our discussions with him. I will read the last paragraph of this, because it is pretty well a rehash of what has been said in the past, but Mr. Lennox advised us that:

" If members of the Association use ordinary good judgment and common sense in their offerings and sale of securities, they need have no fear of having their registration as broker-dealers suspended or cancelled by the Commission."

As a result, we called some sixty or sixty-five members of the Association on the telephone who might be engaged in mailings outside the province of Ontario either to the United States or other provinces of Canada and had them come in small groups before different members of the Board so that the problem could be discussed and the memorandum which I had written could be read. You will note we had them all initial the memorandum so that they could not come back later and say they had not been advised of it.

October 24, 1949, we received a letter from the Chairman of the Commission in which he suggested that

the Association proceed to do something about increases in the offering price.

At that time the work of our price-spreads committee had not yet got around to considering increases.

As a result of his letter the Board of Governors decided that the price-spreads committee should take on the job of setting increases in the offering price and also they recommended to the Commission a schedule for the release of vendors shares of oil and natural gas companies.

This policy was subsequently adopted by the Commission and was publicized in the Commission bulletin for November, 1949. The gist of it is that:

"(1) Not more than 25% of the total share capital of an oil company shall be vendors' shares;

(2) 20% of the vendors' shares shall be released from escrow when the oil company is fully financed, to drill one well (exclusive of the shallow Lloydminster type) and a drilling contract has been entered into therefor;

(3) An additional 20% of vendors' shares shall be released from escrow when the first well (exclusive of the shallow Lloydminster type) is completed;

(4) In additional 30% of the vendors' shares shall be released from escrow when the second well (exclusive of the shallow Lloydminster type is completed); and

(5) The remaining 30% of the vendors' shares shall be released from escrow when the third well (exclusive of the shallow Lloydminster type) is completed."

It was also decided that the Commission would exercise a broad discretion in the release from escrow of vendors' shares of the oil companies engaged in the shallow drilling of Lloydminster type wells and in all exceptional cases such as companies which are engaged in both oil and mining ventures, etc.

" The present policy on the release from escrow of vendors' shares of mining companies will not be changed."

BY MR. GRUMETT:

Q Just how far do you go in interpreting the word "completed"? I notice several times you repeat that. Exactly what would that mean?

A It would mean when the well comes into production or when the well is abandoned on the advice of the geologist because he feels there is not any possibility of getting production.

Q Then, you go on and permit a further release of vendors' shares for drilling on the same lease?

Take the case of a well which has been completed. We will say it has been abandoned, there is nothing there. Do you think it proper to give a large release of vendors' shares when they are again drilling another well which may give the same result?

A I am doubtful that the Securities Commission, which has the sole jurisdiction over releases, would permit it, although on the release of shares from escrow there is a policy in existence between the Commission and the Association now that if the release from escrow of the shares of a company which have been sold to the public by our members is requested, they send us summarized information and the Board of Governors advises the Commission whether they would agree; and, if they do not agree, giving reasons, the Commission is not in any way bound by that advice. Sometimes they take it and sometimes they do not.

Another matter which came to the attention of the Board of Governors at this time was that members of the Association were not delivering Foreign Exchange Control Board number 106 forms, particularly to the people in the United States. Of course, when these forms were not delivered, they could not re-sell the securities without them. Apparently the idea behind it

was that if they did not deliver them, the person in a distant place would have to come back to them and they would know that the security was being sold, in which event they would have an opportunity to persuade them otherwise.

A directive was issued that:

" It shall be considered by the Board to constitute 'unethical conduct' under the regulations made under The Broker-Dealers' Act, 1947, if Foreign Exchange Control Board 106 forms are not delivered on the request or at the direction of any purchaser within a reasonable time.

Note: The Board of Governors wishes to remind members that these forms are the property of the purchasers of securities."

I am coming now into late 1949 and early 1950, when, on about December 15, 1949, it came to the attention of the Board of Governors that some members of the Association were going to be recognized outside as broker-dealers.

At a meeting of the Board on January 4, 1950, a member of the Board of Governors advised that he was going to be able to obtain such recognition, and he tendered his written resignation as a Governor of the

Association and retired from the meeting. His resignation was accepted with much regret by the Board.

Those recognitions did not actually come into effect until April 1st, 1950, when the memberships of the registrants were renewed.

Also, in January, 1950, the mining editor of one of the daily newspapers advised the Quote Committee that he was going to reduce very substantially the list of unlisted mines and oils published under the name of the Association. So, during this particular period of the life of the Association, we were hit with a lot of blows one after the other, which were a little difficult, at the time, to survive.

BY MR. DOWLER:

Q What reason did he give for that?

A The reason he gave was that he felt that some of the securities in the list were not worth putting in the paper.

An election took place for some of the members of the Board of Governors in February.

The three members on the Board who represented the Toronto Stock Exchange went back in by acclamation.

BY MR. McTAGUE:

Q You had better explain that there had been a change in one of the members.

A One of the members had resigned and was replaced with one of the members belonging to the Stock Exchange.

BY THE CHAIRMAN:

Q That is, prior to the election?

MR. McTAGUE: Yes; prior to the elction. And his successor was elected.

THE WITNESS: By acclamation.

There were nine candidates who ran for the five positions on the Board in the group who were not members of the Toronto Stock Exchange and then there was an election in the associate member group. Two ran for one spot.

BY THE CHAIRMAN:

Q Was there a recount in that election?

A No; there was not a recount. In the associate membership group the one who was elected was elected by one vote.

MR. DUNNER: Almost necessitating a recount.

MR. JOLLIFFE: What the Chairman really wants to know is was there any betting on the results?

THE WITNESS: A considerable amount of that.

THE CHAIRMAN: No rake-off.

THE WITNESS: It was in February, 1950, that we brought in a requirement that new associate members must be on probation for six months. I developed that previously, however.

At this time we brought in the requirement that we must have a letter from the company when requests for increases in price spreads were made, showing the amount of stock taken down, the prices paid and a summary of what had been done with the funds.

Around the end of March, 1950, the Canadian postal authorities denied the use of the mails to twelve members and some seventy others.

This matter was referred to Mr. McTague. He went down to Ottawa on it, had conversations with the Postmaster General and the hon. Minister of Justice. As a result the Postmaster General proceeded to restore the mailing privileges to all members and others, and Mr. McTague was advised that the Post Office Act would be amended to set up a Board of Review. I think it was at that time also indicated to him that there might be

an appeal to the courts from the decision of the Board of Review.

AS to the prohibitory mail order: this is the type of letter which was required by the Deputy Postmaster General before they would lift the ban:

"Dear Sir:

With regard to the above order, I hereby agree:

(1) That in future the literature which was regarded as offensive on the basis of which the action was originally taken will be entirely discarded and will not be sent through the mails.

(2) That the company --- the shares of which are being offered to the public --- will undertake that no literature will be sent through the mail in connection with the sale of shares without its definite approval.

(3) That the company will undertake not to make improper use of the mail in future in connection with the issue of any shares."

BY MR. JOLLIFFE:

Q By the way, those suspensions did not, by any means, cover all those who were soliciting busi-

ness by mail in the United States?

A No.

Q Did it cover any who were soliciting business in Ontario only?

A No.

On April 19, 1950, we received a letter from the Chairman of the Securities Commission, in which he made five suggestions for a revision of the policy respecting options, price-spreads, and vendors' interests.

As a result there were joint meetings of the Toronto Stock Exchange representatives, prospectors' and developers' associations representatives, the legal profession and the Association with the Commission.

MR. McTAGUE: I think the Committee has heard that evidence before, from Mr. Lennox.

MR. JULLIFFL: Yes; Mr. Lennox said that.

BY MR. HOUCK:

Q Referring back to depressions, for another minute, had any of the gentlemen from the United States, who had membership, been suspended at any time?

A I would have to check my records on that.

I cannot think of any off-hand. One of the problems which was raised by the recognition outside the Association was the setting of price spreads for those who were outside, some of whom, of course, were in primary distribution.

The Board of Governors of the Broker-dealers Association handled those matters, even though they were not members, and the Toronto Stock Exchange sent out this bulletin, number 1939 of June 14, 1950, directing members of the Exchange to come to the Board of Governors for price spreads whether they were members of the Association or not, in view of the fact that three representatives of the Exchange were on the Board.

At this time the Board of Governors decided that in spite of the fact we had not been able to work anything out as to the violation of securities laws in the United States, we might possibly be able to work something out as to the violation of the securities laws of other provinces.

It was left in Mr. McTague's hands to endeavour to get a meeting together of the securities administrators of the various provinces to see if some progress could not be made towards the reciprocal acceptance of a filing of issues in the various provinces,

but, as I understand it, Mr. McTague was not able to arrange that meeting.. I believe, however, there is one taking place this fall.

MR. McTAGUE: Yes; I so understand.

I might say that all the Commissionerw with whom I discussed the matter --- and I discussed it with all of them across the country --- were in accord that it would be constructive to have a meeting and see if others could not be held along that line. There were differences in dates, arrangements, and one thing and another. It was proposed to have it here in Toronto. It was not possible to have it, but I believe it is taking place in the west this fall.

MR. JOLLIFFE: December, I think.

MR. McTAGUE: Yes.

THE CHAIRMAN: That is merely a meeting of the Commissioners?

MR. McTAGUE: A meeting of the Commissioners to canvass the proposition, Mr. Attorney-General (Mr. Porter) of having reciprocity with respect to qualification, --- the qualifying of issues.

THE CHAIRMAN: Are the Broker-Dealers invited to be present at that meeting?

MR. McTAGUE: I do not know. The extended

the invitation to have them in.

THE CHAIRMAN: Now they have called the meeting and it will be a meeting exclusively of the Commissioners?

MR. McTAGUE: Yes. It was intended to be that.

BY MR. JCLLIFFE:

Mr. Wismere, in assuming that a reciprocity treaty might be a very desirable thing, in the meantime --

A It was not a reciprocity treaty; it was reciprocal acceptance.

Q I was just being facetious. Even assuming that such an arrangement is highly desirable and much to be hoped for, in the meantime, is it or is it not a fact that many of your members are engaged in soliciting business in other provinces of Canada?

A Yes.

Q That is a fact?

A Yes.

Q And your Association does not regard it as being improper conduct on the part of a member?

A No; because, again under our regulations, we refer to violations of the Securities laws of the province of Ontario or the Criminal Code of Canada.

Q You are not concerned with violations of

the laws of Alberta or Manitoba?

MR. McTAGUE: It works both ways. I had a little to do with business of that kind, with some Alberta people, in the early days of the oil boom.

MR. JOLLIFFE: That may be, but I am questioning Mr. Wismer as to the Official attitude of the Association towards the conduct of its members in that regard.

THE WITNESS: We are concerned about it, and that is evidenced by the fact that we were anxious to arrange a meeting of the securities administrators from the various provinces, in order to try to work out something which would be mutually satisfactory.

Another minor point at this time which arose, was the size of type being used by some members in prospectuses. They were using a type so small that it was pretty hard to read with the normal eye. We issued a directive that the size of type in prospectuses used by members would not be smaller than eight point; a typewritten or mimeographed prospectus shall not be reduced in size to less than eight point lineotype. This was adopted by the Ontario Securities Commission.

BY MR. JOLLIFFE:

Q You have not issued any similar directive with regard to the statement that "We act as princi-

pals." I notice that some of them have got down to what appears to me to be six point. You could not get down very much further without disappearing.

A There is one point I would like to mention on that. Under the Securities Act, it appears that a security dealer is only obligated to advise a purchaser once before the contract is entered into and before payment is accepted, that he is acting as principal; but, as a matter of policy, in our literature, where there is solicitation or an offering, we require them to put it in every time.

BY THE CHAIRMAN:

Q So, it would also be in the confirmation?

A Yes.

MR. JOLLIFFE: Yes; it is expressly required in the confirmation.

THE CHAIRMAN: It would have to be, even if it were not expressly required.

MR. JOLLIFFE: That interpretation of the Act may be quite correct. It seemed to me if it is going to appear on the back page in six point type it might as well be taken out altogether, for all the good it does.

THE WITNESS: That is a matter which I will take up with the Board of Governors.

There was another matter at this time in which the Board became interested and thought it could do something about; apparently it is the practise of the Toronto Post Office to issue what are called "half pint mail bags" to people in the securities business who are making substantial mailings. They fill --

BY MR. McTAGUE:

Q What does a "half pint mail bag" look like?

A I have not seen one of them, but they will hold approximately two thousand business-size envelopes.

MR. GRUMETT: That is a generous half pint.

THE WITNESS: That is a designation by the postal authorities rather than by the street.

MR. JOLLIFFE: Not to be confused with the Liquor Control Board.

THE WITNESS: The Board of Governors got the idea that if our Association could make a requirement requiring our members to come in and get dated "perused" tags for these "half pint mail bags", we would then know approximately how much mail was being

sent out at any one time; so, we put the matter in Mr. McTague's hands, who took it up with the postal authorities at Ottawa and they thanked us for our co-operation with respect to the matter but they did not think it was possible to work it out.

That was an attempt on the part of the Board to have some idea all the time as to how much mail was being sent out by each of its members.

BY MR. JOLLIFFE:

Q Why would you want to know that about a member's business?

A Because of that notice issued by the Chairman of the Ontario Securities Commission dated September 6, 1949.

Q The notice referring to the decision of the Canadian Securities Commission?

A Yes.

BY MR. GRUMETT:

Q Would that check be possible if all mail is sent out from the printing house?

A If it is sent out from the printing house, they put it in the mail bags and I understand they

segregate it as to various larger centres. It then goes down to the main post office in Toronto where it is sorted. So that, it would be possible there --

Q The printing house, though, might be sending out mail on that particular day for two or three different houses?

A Yes; but the member of the Association would know that the mail was going out, and he would be required to come in and get a "perused" tag which would be dated. If he got one hundred "perused" tags we would know that he had the intention of sending out approximately 200,000 pieces of mail -- two thousand business envelopes in each bag.

BY MR. DOWNER:

Q Would the auditor not know -- from the broker-dealer's clients -- how large their mail was?

A The Association auditor?

Q Yes.

A I do not see how he would, Mr. Downer.

BY MR. JOLLIFFE:

Q In any event, he would not know where the

mail went?

A No. He would not know where the mail went.

There is another matter which came to our attention at that time and which caused quite a bit of concern, namely, the practice of members of the Association using self-addressed return envelopes with different designations on them.

BY I.R. McTAGUE:

What do you mean by "designations"?

A Supposing, for example, the name of the firm was "Doakes Securities" and Joseph Doakes was the sole owner. Ordinarily on the self-addressed return envelope it would show "Doakes Securities" or it might show "Joseph Doakes, sole owner, Doakes Securities", but they started using all sorts of variations -- like just "Doakes" and just the address, when these fraud orders had been issued in the United States.

BY MR. JOLLIFFE:

Q The statistical department?

A Yes. The Statistical Department. So, on September 11, 1950, we issued a directive to members:

"Following a discussion with the Chairman of the Ontario Securities Commission, the Board of Governors wishes to advise that members are prohibited from making use of any name or address for their securities business, on self-addressed return envelopes or otherwise, other than the name under which they are registered with the Commission and the address or one of the addresses of which the Commission has been advised in writing."

Q What is the date of that?

A September 11, 1950.

On October 25, 1950, I wrote a letter to Mr. Lennox regarding recognitions outside the Association, on instructions from the Board, which I would like to read to the Committee.

"Several months have passed since several broker-dealers ceased to be members of this Association and the Board of Governors is convinced that it is not in the public interest nor in the interest of the securities

business generally that they should be permitted to remain outside the Association's jurisdiction.

The Board is of the opinion that the Legislature of the Province of Ontario must have enacted the Broker-Dealers' Act, 1947, because it felt that it was in the public interest for the Association to be established and the broad self disciplinary powers given to the Board clearly indicate that the Association was meant to be strong. It is also a matter of record that at the time the Act was passed, it was contemplated that if the strength of the Association was not to be undermined all broker-dealers should be members, unless very exceptional circumstances existed.

If it is no longer in the public interest that the Association should continue to function effectively, then the wisdom of retaining the Broker-Dealers' Act, 1947, on the Statutes might be questioned. However, if the Association is expected by the Government of the Province of Ontario to function with

the maximum degree of effectiveness, then it seems only reasonable that its efforts should not be partially obstructed through broker-dealers being permitted to carry on business beyond its jurisdiction.

Broker-dealers who are not members of the Association have created a difficult problem for the present Board of Governors, which, I believe, is generally acknowledged to have made excellent progress. Non-member broker-dealers are not obliged to subject themselves to the Association's regulations and requirements. This gives them unfair advantages over those who are members and would seem to indicate that they have no sincere desire to assist the Ontario Securities Commission and their fellow broker-dealers in improving the securities business for Ontario. There are at least two constructive regulations which the Board has hesitated to pass, because broker-dealers who are not members of the Association would not have to abide by them.

I think it is too much to expect that the

Board will never make mistakes or that it will always function to the complete satisfaction of the Ontario Government and all the members and associate members of the Association. However, I know the vast majority of the broker-dealers and their salesmen want this Association to cooperate with the Ontario Securities Commission in improving the securities business in Ontario and will always expect the Board they elect each year to carry out this policy.

The earnest request I have to make on behalf of the present Board of Governors is that as of April 1, 1951, you again require all broker-dealers to be members of this Association except in very exceptional circumstances."

MR. McTAGUE: That situation has been straightened out.

THE WITNESS: Then I come on into 1951.

The Board of Governors was re-elected by acclamation from the previous year. There had been some changes. I think one of the previous members of the

Board resigned due to ill health but the Board which was in at the time the election would have taken place was re-elected by acclamation.

In January and February, 1951, former members of the Association started to come back in. They were led by members of the Toronto Stock Exchange. Mr. Lennox then suggested that we send forms out to all our previous members to give them an opportunity to return. There was not much difficulty about it. Most of them did return voluntarily.

We brought in our new questionnaire for applicants to membership, which you have seen.

We made the suggestion to the Commission about examinations under oath, under Section 12, which I have mentioned.

We issued a notice to members concerning trafficking in shareholders' lists and warned them against it on account of a section of the Ontario Companies' Act.

Two sub-committees of the Quote Committee were appointed, one to deal with complaints regarding qualifications; the other to deal with disputes between brokers arising out of trades in unlisted certificates, including buy-ins.

The new requirements for associate membership were brought in, including the experienced and inexperienced categories. I went over this, this morning.

We followed up with the new requirements for membership. The fees were increased, as I mentioned previously. They were doubled in the case of new applicants for membership and stepped up from ten dollars to fifty dollars in the case of associate members.

A new regulation was put through regarding designated unlisted traders. It was found that certain members of the Association would purport to call a market on a stock and would not have anyone in their offices. Other members of the Association would call, the telephone would not be answered. Consequently, we made a regulation that any member of the Association who was continuously trading in unlisted securities, must have an unlisted trader present in his office from 9.30 o'clock in the morning until the close of the Toronto Stock Exchange. That is the period for trading in unlisted securities. If there was any change in that designated trader, or if he ceased to be a designated trader, they would have to advise us.

THE CHAIRMAN: It is five o'clock. Shall we now adjourn until 10.30 o'clock to-morrow?

MR. JOLLIFFE: Fine.

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---The witness temporarily retired.

---Whereupon the further proceedings of this Committee adjourned until Thursday, August 30, at 10.30 o'clock a.m.

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PROCEEDINGS
of the
SELECT COMMITTEE OF THE
ONTARIO LEGISLATIVE ASSEMBLY

APPOINTED TO ENQUIRE INTO AND REPORT
UPON CERTAIN MATTERS CONCERNING THE
ADMINISTRATION OF JUSTICE IN THE PROV-
INCE OF ONTARIO.

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Vol. 24.

Thursday, August 30, 1951.

T I E N T Y - F O U R T H D A Y

Toronto, Ontario,
Thursday, August 30, 1951,
At 10.30 o'clock a.m.

---The further proceedings of this Committee re-convened pursuant to adjournment.

---All parties present (excepting Mr. Janes).

---Same appearances as heretofore noted.

WILLIAM M. WISMER,

A witness previously heard and now recalled, who, having been already sworn, continues his testimony as follows:

THE CHAIRMAN: I think we are nearly a full complement. Mr. Janes will not be here to-day. Mr. Wismer, will you continue?

BY MR. McTAGUE:

Q Mr. Wismer, some of the members of the

Committee asked you questions yesterday for which you were to obtain the answers. You might follow with those now, before going on with other matters.

A I believe Mr. Houck asked about citizens of the United States who had been refused membership in the Association, or who had been suspended recently.

MR. HOUCK: That is right.

THE WITNESS: Since the beginning of 1951, we have not had any application for membership or associate membership from any American citizen, and none has been suspended.

I conducted a pretty good check of the records over the past years and I am certain that the same applies for that period.

MR. HOUCK: That answers my question, gentlemen.

THE WITNESS: Mr. Jolliffe asked the question about fictitious orders which had been issued. I have a list of thirteen fictitious orders which were issued during the summer of 1949.

In the first case, two partners had bought out an existing business.

In the second case, the sole proprietor went into

business under a trade name.

In the third case, the property was purchased under a trade name, and had been since he had his registration as a broker-dealer.

In the fourth case, the sole proprietor had bought out a business.

BY MR. McTAGUE:

Q And the business was being carried on in the former proprietor's name?

A Yes.

In the next case, it was the sole proprietor carrying on under a trade name.

In the next case, the sole proprietor had been carrying on for some time under a trade name.

The next case is similar.

The next case is the same.

The next case is the same.

The next case, two brothers had been carrying on business which had been sold out, and the sole proprietor sold it to another sole proprietor.

Q But still carried on business under the original name?

A Yes.

In the next case, the sole proprietor was carrying on under a trade name.

The same with the last two cases.

Since these thirteen fictitious orders have been issued, we have not received notification from the S.E.C. of any others. There is just the possibility that fictitious orders have been issued since that time, for the reason that you mentioned, Mr. Jolliffe, in that they had been using designations which they were not authorized to do.

Q But you have no notification of that?

A No.

Q Then, I think Mr. Jolliffe coupled that question with another one, with regard to whether these fictitious orders, as you call them, were preceded by fraud orders.

A In these thirteen cases (indicating), they were not.

MR. JOLLIFFL: That is what I wanted to know.

THE WITNESS: But they had the same effect -- stopping the mail.

I believe Mr. Jolliffe asked another question about the number of applications which had been received recently for associate membership, and the number of

approvals and rejections.

Since the first of March, eleven experienced associate members have been approved, and fourteen inexperienced have been approved.

Also, since March first, seven inexperienced have been refused, three of these because they failed to pass the required examination.

There were four who failed to pass the examination after the six-months probationary period.

Originally we had put them on probation for a period of six months, and all that group are required to take the examination at the end of that probationary period.

BY MR. McTAGUE:

Q Now, Mr. Wismer, you intimated about the time of adjournment yesterday that you were pretty nearly at the end of your evidence in chief. I believe you lost your notes, but as far as that is concerned, you are ready to go ahead, and complete your evidence in chief.

A Yes. I do not require my notes. There are just a few things to gather together.

On March 1st, 1951, the Ontario Securities

Commission, due to their snap audits, became concerned about the accounting systems which were being maintained by certain members of the Association, and, consequently, on March 16th, we issued a notice to members in which we advised them that the Board of Governors would take drastic disciplinary action against any member who does not maintain an adequate and accurate accounting system at all times.

Then, subsequently, we issued another notice to members on May 31st, 1951, in which we advised them that it was undesirable, in the interests of the Association, for a member to operate his business at any time with insufficient capital, ample to meet the Association's minimum capital requirements.

It was also pointed out by the Board, that if they permitted such practice, the requirements or orders would become meaningless, and it was up to the members to keep the capital in order at all times, or suspension from membership would result as soon as the matter was brought to the Board's attention.

BY MR. JOLLIFFE:

Q That was May 31st?

A Yes, that was May 31st.

Q Have there been any suspensions under that rule?

A The Chairman of the Audit Committee called me on the telephone last night, and he had a discussion with the other members of the Board of Governors, and I think the Securities Commission, as the result of a surprise audit, recently conducted of the members' books and accounts --

BY MR. McTAGUE:

Q It was a surprise audit put through by yourself -- by the Association?

A Yes. As the result, letters went out this morning suspending three members. In one case it was decided the members should not be permitted to start trading at ten o'clock this morning.

BY MR. JOLLIFFE:

Q That was three of your members?

A Yes.

Q These were all the result of an audit?

A As a result of a surprise audit.

BY THE CHAIRMAN:

Q An Association audit?

A Yes.

Q It was not a Commission audit?

A No; it is an Association audit.

BY MR. JOLLIFFE:

Q These are the first cases which have arisen under the May ruling?

A Under the May ruling. But prior to that there had been suspensions of members for not being able to meet our minimum requirements.

BY MR. HOUCK:

Q Who listed that suspension? The Board of Governors?

A It is imposed by the Board of Governors, and the Ontario Securities Commission, at the same time, as a matter of co-operation, and they are listed at the same time.

BY MR. JOLLIFFE:

Q I do not want you to mention any names, Mr. Wismer, because that might be unfair, but have there been any investigations arising out of unsatisfactory audits, aside from the suspensions which were made

effective to-day?

A Yes. There previously have been. For example, if the regulations I mentioned yesterday,-- if a member would issue an N.S.F. cheque, or failed to accept securities, we sent an Association auditor in immediately. The snap audit of the Ontario Securities Commission, has been very effective in turning up certain things between audit dates, because there is a tendency on the part of members to allow their financial position to slip, but with a snap audit conducted by the Commission, they do not know when the Commission's auditors are coming in and checking up on them. Consequently, they are more prone to keep their books and accounts and financial position in shape at all times.

Q They have two audits a year?

A Two audits a year, and also a snap audit at any time, by the Ontario Securities Commission.

BY MR. MCTAGUE:

Q November 30th is the ordinary audit?

A Yes.

Q And one surprise audit, when the member does not know when the Association auditors are coming in, and also a snap audit by the Ontario Securities Commis-

sion as well.

MR. JOLLIFFE: Then, there could be three audits.

MR. McTRAGUE: There could be, because the snap audit does not necessarily catch everything. But there could be three.

THE WITNESS: There could be four. It depends on what the Commission wants to do. They may conduct a snap audit of a member of our Association to-day, and go back two weeks from now, if they feel circumstances warrant it.

BY MR. JOLLIFFE:

Q Has there been any case since the first of the year where you conducted a surprise audit and found the capital position to be deficient and then, following consideration, you took no action?

A I cannot remember a case. We work very closely in conjunction with the Ontario Securities Commission on financial matters, and on all other matters.

BY MR. HOUCK:

Q What factors are considered in listing a

suspension?

A The fact that he has brought his financial position up to meet the minimum capital requirements of the Association. Then, in addition, we must be satisfied as to where the money has come from.

Q You mean by that, to be sure there is not any "front" putting up the money for him.

MR. JOLLIFFE: A "back".

THE CHAIRMAN: You mean a "back"?

MR. HOUCK: Yes, I mean a "back".

THE WITNESS: Yes, the source of the funds coming to him are checked into very closely.

One of the matters we have outstanding for discussion with the Chairman of the Ontario Securities Commission in September, is the matter of decreasing our price spreads. Mr. Lennox feels that perhaps our price spreads are a little high.

BY MR. McTAGUE:

Q The maximum?

A Yes, the maximum is a little high. That is, the spread between the take-down and the offering price.

The Board thinks the problem might be approached from the point of view of getting tougher in regard to the release of vendors' shares from escrow.

In other words, some of the members of the Board feel that no security dealer should get a cent out of the release of vendors' shares from escrow until there has been a substantial exploration and development of the company's properties. So those matters are still wide open for discussion.

I rather imagine that out of this discussion will come some constructive changes this fall.

BY MR. JOLLIFFE:

Q Do I understand you to say, Mr. Wismer, that in the view of your Board, the ten percent. of vendors' shares which presently are not escrowed, should be decreased until developments and explorations have reached a certain point? Is that right?

A Well, there are some members of the Board of Governors who disagree with that. I know one member of the Board of Governors who would go so far as to tie up all vendors' shares until the property is brought into production. Other members of the Board of Governors

disagree, and, consequently, as far as we are concerned, it is still very much in the air. It has to be worked out by discussion with the Chairman of the Commission.

BY I.R. McTAGUE:

Q The Prospectors Association are rather interested in that subject, are they not?

A Very much.

BY I.R. JOLLIFFE:

Q Yes, naturally, but there are alternatives, are there not? I mean, there are alternative methods of compensating the prospectors at the early stages, apart from releasing ten percent. of the vendors' shares, at the outset?

A Yes. As a matter of fact I think it is usual to compensate a prospect by other methods, because the broker-dealer as a rule likes to get his hands on all the free vendors' stock that he can.

Q And he makes it worthwhile, -- or apparently worthwhile -- for the vendor to let his free stock go very early in the day?

A Yes.

Q That is the situation?

A Yes.

BY MR. GRUMETT:

Q Then the tie-ing up of the vendors' shares is not, in effect, hurting the prospector?

A The Prospectors' and Developers' Association disagree with that proposition very vehemently.

BY MR. McTAGUE:

Q What is their viewpoint?

A Their viewpoint is that the initial ten percent. releases should be retained, and they are interested in seeing the present policy of release, which is approximately one vendor's share for each three Treasury shares taken down from the company, retained. They do not want the policy changed.

Q Of course, anything that would induce the prospector to hold his stock would be to his benefit. If you make the rule such that a prospector is practically compelled to turn his shares over to some promoter or broker-dealer, then the interests of the prospector are being diminished.

THE CHAIRMAN: Is that not a matter of bargaining

between the prospector and the promoter? How can you control that? If he thinks he can get a better deal by turning over some of his vendors' shares to a promoter, he will do it -- if he thinks it is the best deal he can make.

MR. GRUMMETT: Sometimes they are turned over for a very small consideration.

THE CHAIRMAN: On the other hand, he still retains stock in it, and he may be a millionaire at the end of it, if he hangs on. That is the gamble. If he thinks he can get a better deal, and deal more effectively, by turning over a portion of it, is that not for him to decide? Is there any reason why that should not remain?

I do not see how you can tell a prospector that he may not do this, that, or the other thing, with his free vendors' stock. If he thinks it is in his interests to turn it over to a promoter, and thinks it will result in a quicker distribution of the stock, that is in his interests, and he may do so? I may be wrong.

MR. JOLLIFFE: As long as it is free stock, yes.

I do not think anybody would try to tell him what he can do with it.

THE CHAIRMAN: No, but he can sell it in the market, or to anybody he likes. Is that right?

THE WITNESS: Yes. There is one point about prospectors, and that is that they are usually poor men, and as a result, they will realize as rapidly as they can on stock which they have, by selling it for cash.

THE CHAIRMAN: Well, on the other hand, if they want to do that, what provision could be made to prevent it -- in all fairness to them?

THE WITNESS: None, Mr. Chairman.

BY MR. JOLLIFFE:

Q But it does follow, does it not, Mr. Wismer, that if some of the Association had their way, and if all the vendors' stock were escrowed for a considerable period of time, some other method of compensating the prospectors would have to be found -- probably a larger cash consideration?

A Yes.

Q A larger cash consideration might affect the Treasury of the company, but, on the other hand, it might also make it easier to market the stock in the ordinary way.

A Yes, I would agree with that.

Q Does your Board attach a great deal of significance to some of the operations which are taking place in vendors' stock, or do they again fall into the rumour class?

A The Board of Governors feel -- and I feel -- that because of the more stringent policy in regard to the release of vendors' shares from escrow, there is a definite tendency on the street to give the public a better "run for its money", and to pursue deals through to the point where they are either proven or unproven.

BY THE CHAIRMAN:

Q But is the present policy stringent enough, in your opinion? Would any further limitations improve the position for all concerned -- or otherwise? Or are you in a position to answer that question?

A Personally, I have never subscribed to the idea that there should be any great reward to a broker-dealer,

as far as free vendors' stock is concerned, until the property is proven or unproven.

In other words, I believe the broker-dealer should speculate along with the public, and once he does that, he will put forth a greater effort in order to get the pot of gold at the end of the rainbow, which is the free vendors' stock.

BY MR. JOLLIFFE:

Q Mr. Wismier, would this be a fair situation; in the case of a three-million-share company, the vendors' stock amounts to 750,000 shares, of which 75,000 would be free, or perhaps I should say, would be "free of escrow".

The broker-dealer takes down, perhaps in the first instance, 100,000 or 200,000 shares. If he has been able to get hold of 75,000 free shares from the vendor, or if somebody else has been able to get hold of them, they may be thrown into the market at any time. Is that right?

A Yes.

THE CHAIRMAN: That is the problem, of course.

BY MR. JOLLIFFE:

Q That is how the problem arises?

A Yes.

Q As a matter of practice, does not the prudent broker-dealer make sure that somebody else has no control over the 75,000 vendors' shares?

A Oh, you bet he does, and as a general rule, if he has not control, they are tied up in pool.

Q If, after taking down 200,000 or 300,000 shares, he wants to get out fast. If he controls those 75,000 shares, he can get rid of them in a hurry, only at a lower price, can he not?

A Yes.

Q That is, if there is any market for them at all.

A And, as a general rule, he will sell the free vendors' shares to the public, along with the Treasury shares.

Q Along with the Treasury shares?

A Yes, and the members of the public do not know whether they are getting Treasury shares or free vendors' shares, because the stock certificates all look the same.

Q Yes, but that is quite lawful, under the present scheme of things?

A Yes. But the point the Board of Governors is making is that we can get at the profit made by the broker-dealer in another way than by decreasing mark-ups, and that is by holding the vendors' stock in escrow for a longer period of time, until development at the property warrants a release.

Q Yes, but is there not another way of putting it, Mr. Wismer? That, at the present time the maximum mark-up from, say ten cents to thirty cents a share does not disclose the full profit which the broker-dealer may be making.

A No, it does not, except that the prospectus would disclose that, but I am the first one to admit that prospectuses are very hard to read, and as Mr. McTague has said, they are probably not read by any more than ten percent. of the prospective purchasers.

Q And perhaps not ten percent of those would understand it?

A That is right.

BY MR. MCTAGUE:

Q Have you any other evidence you want to put in,

in chief?

A We sent out a notice to members on April 3rd, 1951, advising them that the Association had been advised that the Ontario Securities Commission would be greatly influenced by evidence of large mailings, in dealing with minor infractions of the Ontario Securities Act.

There is one statement on policy regarding the members' literature, which I would like to read. It was sent out to the members on May 4th, 1951. It says:

"The continued use by some members of literature of an irresponsible type necessitates the adoption of a firmer policy in this regard by the Board of Governors.

Hitherto the officers of the Association have rejected some literature but for the most part have endeavoured to change and delete specific words, phrases, sentences and paragraphs where their use was objectionable or illegal. These changes have been made within the framework of the material as submitted. This attention to specific particulars has been based on the assumption that each individual piece of literature as a whole would convey a respon-

sible and creditable impression. Unfortunately, this standard has not yet been uniformly achieved.

The following are examples of practices which will not be condoned:

- (1) Labelling a document an Informational Bulletin which contains only exhaustive narratives of an industry or area in general and a minimum of unimportant facts relative to the company in question;
- (2) Suggestions that national or international events or markets will have immediate beneficial effects on a company when in fact such is not the case;

and numerous similar practices.

Henceforth material submitted for perusal which, for any reason or combination of reasons either in context or mode of presentation, is not consistent with the standard which must be expected from responsible members, will be rejected. Any lesser action could not be justified from an honest, impartial viewpoint.

It is hoped that all members will carefully assess their literature with this policy in mind and concern themselves not only with doubt-

ful superlatives and exaggerated statements but with the essential characteristics which determine whether or not it can be termed responsible in the true sense of the word."

BY MR. JOLLIFFE:

Q Do you feel that has brought some improvement?

A Very much improvement, Mr. Jolliffe, because I would say that since May 4th, we possibly have had 12 or 15 outright rejections.

Q Since May 4th?

A Since May 4th, yes.

Q When you reject the document as written, do you retain a copy of the rejected copy in your file?

A We only return one copy to the member, and retain all the rest in our files.

Q And that rejected copy is filed with the Commission?

A No.

Q It is not?

A No, it is not sent to the Commission.

Q I wondered about that, because I came across two of them -- because you rejected two in May, which

inadvertently were filed with the Commission.

A That is probably so, but as a matter of practice they are not, because the member is not using the literature. However, I have toyed with the idea of suggesting to the Board of Governors that we might take disciplinary action against members of the Association who even submit literature which needs to be rejected.

BY MR. GRUMETT:

Q Would you not think that filing that rejected literature with the Commission would, in effect, put the Commission on guard against that dealer?

MR. McTAGUE: It might be a good idea.

THE WITNESS: Well, it is a moot point. Some of the members of the Board of Governors feel -- as a matter of fact, the majority feel -- that because a piece of literature is rejected, we should not hold it against a member, because he has not actually used it. He is availing himself of the services of the officers of his Association.

Q He would use it, if it was not handled in this way, would he not?

A Yes, he would.

Q Do you not think it would be fair to the Commission to have some information which would show just what each individual dealer is trying to "put across"?

A Yes, I think you may be right on that. As a matter of fact, I think I will present it to the Board at the next meeting.

BY MR. JOLLIFFE:

Q You see, Mr. Wismer, in connection with Mr. Grummett's question in the draft letter dated May 14th, 1951, there appear these words -- I will not mention the name of the broker-dealer -- "Rejected, 11th of May", and it says, "This is not the quality of literature which the Association expects from responsible members."

And then there are two sets of initials, which appear to be those of Mr. Gemmell and yourself?

A Yes, that is correct.

---The Chairman retired, and the gavel was assumed by Mr. Villeneuve.

BY MR. JOLLIFFE:

Q Do you not think, from the point of view of

the Ontario Securities Commission which, for that matter, may be asked to undertake a general review of the kind that Mr. McTague undertook several years ago, that it is material information which should be on file? I am not saying it is conclusive; it may be want of competence rather than anything else, but it seems to me it is quite relevant?

A We have a tight rope to walk, Mr. Jolliffe, for this reason; that we have to be of some service to our members, and at the same time in many respects, we have to act like a Securities Commission in taking disciplinary action against them in suspending them or expelling them.

Q You do have a dual personality there.

A When they submit this literature, shall we regard it as a service, or something whereby we can pick them up and take disciplinary action? If they use it, then the problem is theirs.

Q That problem is inherent in all businesses or professions. It is bound to arise.

A That is the problem.

Q I can see that.

A In regard to the prospectuses which are filed with the Ontario Securities Commission; if they reject

one, they do not put a memorandum on their file stating necessarily why it was rejected, because there had not been full disclosure by some member, perhaps. They act the person filing to make a full disclosure and send it back.

That is the problem we have with this literature.

MR. GRUMMETT: It might be of benefit to members of the Committee if we had this last piece of literature read.

MR. JOLLIFFE: It is quite lengthy.

MR. GRUMMETT: Yes, but it is very informative.

BY MR. JOLLIFFE:

Q Incidentally, Mr. Wismer -- and this is just in the nature of a sort of test question; have you ever heard of a man named ali Ashgar Hassan? Have you ever heard of him?

A How do you spell that last name?

Q Hassan, H-A-S-S-A-N?

A No, I never heard that name, that I can remember.

Q Neither have I. I was wondering if Mr. McTague had ever heard of it.

MR. McTAGUE: No. It rings a bell in connection with some of the "terrible Turks" in the wrestling game.

MR. JOLLIFFE: You have that in the sporting world, instead of the business world.

MR. McTAGUE: That is right.

MR. JOLLIFFE: I would be interested to know if anybody in this room has ever heard the name of Ali Ashgar Hassan? In the absence of a volunteer, I assume that he is not very well-known, but he is described by one of your members as "an internationally known mining engineer and geologist" in the literature.

THE ITNESS: He may be, for all I know. I never heard the name before.

BY MR. JOLLIFFE:

Q He is not well known in this room, anyway.

A He may be known.

Q Yes, he may be known internationally, but not here. He is represented to be a great authority of the Temagami Mining area. The exact words are, "internationally known mining engineer and geologist".

MR. McTAGUE: In which mining area?

MR. JOLLIFFE: The Temagami mining area.

I have not heard of him before, and I do not consider myself entirely uninformed on these things, and I was wondering if it was just ignorance on my part, or if the statement was just an exaggeration. It is rather a small point.

THE WITNESS: I cannot answer that question.

BY MR. GRUMETT:

Q There might be a big point there, Mr. Chairman. Does the man exist?

MR. JOLLIFFE: I do not know whether he ever existed.

MR. McTAGUE: I may attempt to provide some enlightenment on that, with regard to people of that type and character, who are unknown.

There was a working arrangement -- and I presume it still exists -- between the professional engineers and the Securities Commission, and while the information or working arrangement has got to be somewhat confidential, as far as that is concerned,

in all cases of somebody entering the field for the first time, we always consulted the professional engineers, and I think they still do it, although I do not know for certain.

That was one of the policies which was worked out. That is one of the policies well-known to the professional engineers, and that is why they are interested, as an Association.

MR. JOLLIFFE: Perhaps I should interject here, to be fair about it, in this same bulletin, the gentleman, Ali Ashgar Hassan, was referred to once as being the "late Ali Ashgar Hassan", which signifies that he is dead.

MR. McTAGUE: Yes.

MR. DOWNER: It does not say how long ago.

MR. McTAGUE: Are you sure there has not been a resurrection?

MR. GRUMMETT: That usually happens.

MR. McTAGUE: As a matter of fact, there was a pretty close working arrangement, because you can well understand, as members of this Committee, that you

can get people who are geologists, or mining engineers, and there is no question but that some of them certainly have in the past furnished literature or reports of a kind and character which could be built up by the writer, and subsequently, writers could have availed themselves of that material, and they feel that they could go back on what a professional engineer has said. There have been people of that kind. The professional engineers were very much interested.

During my time on the Commission we were continually dealing with that sort of thing, with their help. I would assume that still goes on, because if you get a mining engineer who, in reality, has become a promoter, he is a dangerous person in this game -- very, very dangerous.

BY MR. HOUCK:

Q Are not the people gullible for that sort of report?

A Well, I don't think an engineer's report, Mr. Houck, interests people very much, but it is the report of the present writer in connection with the offering, building up the proposition, which can be built upon an engineer's report, and in that way, he

feels he can escape trouble. That is the report the public sees, and they become gullible, although the engineer keeps his terms very well couched in engineering technical terms, which the public do not understand, and the writers can accept that, and do it very insidiously.

MR. HOUCK: And this is the sort of report the public "falls for"?

(Page 3428 follows)

MR. McTAGUE: I think there is the danger they will. I think they used to "fall" for that sort of thing, as you put it, years ago more than they do now. There has been very satisfactory processes of education along these lines as far as the Association and the Commission are concerned.

I do not think it has the same intensity and importance that it used to.

But the objective of literature is to sell stock.

BY MR. McTAGUE:

Q. Now, have you finished your evidence in chief?

A Yes, I have.

MR. McTAGUE: With the Committee's permission, I would like to ask two or three questions in the way of a summation.

MR. GRUMMETT: Before you do that; I was wondering if, in your experience, as a former Chairman of the Ontario Securities Commission you have had occasion to question the reports of an engineer, and feel that they were not sincere.

MR. McTAGUE: Oh yes, certainly. I have had my doubts about them.

MR. GRUMMETT: What can you say about it?

MR. McTAGUE: I had a very capable assistant, naturally. He was a mining engineer. I refer to the Deputy Minister of Mines, -- a very capable adviser.

There was not anything we could actually do with respect to the engineer, because we had no power under the Securities Act.

MR. GRUMMETT: The Securities Commission has no control over an engineer?

MR. McTAGUE: No, but we could stop his activities with the Commission by just finding ways and means of stopping, and indicating to the people that we did not like that sort of thing, and they would go back and get somebody else.

MR. GRUMMETT: You can say to those, regarding the filing, "We are not prepared to accept the report of such-and-such an engineer"?

MR. McTAGUE: Oh yes.

MR. JOLLIFFE: That has happened?

MR. McTAGUE: Yes.

BY MR. McTAGUE:

Q. Then, before you are further questioned by

the Committee, I would like, by way of summation, to ask you three or four questions.

You are the man, who, as solicitor of the Securities Commission, made the first draft of the Broker-Dealers Act?

A That is correct.

Q And when did you first undertake that?

A In the middle of December, 1945.

Q And how far would your draft be the views of other people in the trade, and so on? What was the process of that?

A On the first draft, you had consulted with people from the Securities business and you gave me your ideas, and I put them down on paper as you suggested, and we completed the first draft after a period of about a month.

MR. McTAGUE: With your permission, I would like to lead this witness a little bit.

MR. JOLLIFFE: Yes, I think that would be in order.

BY MR. McTAGUE:

Q. There were meetings ^{with} / people in the business in connection with this business right along?

A Yes. After it was drafted, it was submitted to

the Ontario Dealers Association. They considered it, and had it considered by their council, and came back and made suggestions for changes.

---Whereupon the Acting Chairman retired, and the Gavel was re-assumed by the Chairman.

BY MR. McTAGUE:

Q. Then, in the process of developing this and the new Securities Act, what associations on the Street were called in to conference -- they were, were they not?

A. Yes.

Q. The I. D. A. and the Exchange?

A. Yes.

Q. And the new Broker-Dealers -- the outside group?

A. Plus the Chartered Accountants.

Q. And as a result of that, the Act was developed?

A. Yes.

Q. You became the first Secretary of this Association -- this Broker-Dealers Association?

A. Yes.

Q. Perhaps you can give the Committee an idea of how that came about.

A. Well, I grew into the job. I was working with people on the Street all the time, making changes in the drafts of the Act, and subsequently in the regulations,

consequently I was in a position to know quite a bit about it, and when they decided to organize the Association, they were looking for a man for the job, and they asked me if I would like it.

I discussed it with Mr. McTague, and he saw no objection to my leaving the Ontario Securities Commission, consequently, I joined the Broker-Dealers Association.

Q You have been with them since they have been operating, in 1948?

A Yes.

MR. McTAGUE: All right.

BY MR. JOLLIFFE:

Q. Mr. Wismer, you referred to your onerous duties in connection with perusing literature, and I do not question the use of that adjective, because, having read some of the literature, I can see it must have been a burden.

I was interested to hear the statement of policy you wrote, I believe in May, by the Board of Governors.

A May 4th.

Q With respect to literature?

A Yes.

Q And indicating the type of literature which should not be used, which should not even be submitted for

editing by the officers of your Association.

A . Yes.

Q Now, has your Board given any consideration to the form which the literature has been taking lately, quite apart from the text of the literature? I mean the form of presentation, as Mr. Lennox told us, is that of a news bulletin, rather than that of a letter to a client, in most cases? I think that is indicated. I will read a few of the names which are being used consistently in literature sent out by some of your members.

Canadian Financial Commentary, Economic Financial Survey, Market Graphs, Reports and Comments, / ^{The} Canadian Mines and Industrial Review, Market Notes, Canadian Oils and Petroleums, The Mining Spotlight and Market Notes.

Then one dealer uses the name of his business, plus the one word "Bulletin", which is pictorially presented in the midst of what looks like an atomic explosion. There is an explosion in the middle of the word "Bulletin".

Another one, down near the bottom "Gold Digest".

Another uses the name, plus the words "News from the Field".

Another one calls his sheet "Market News and Views".

Another dealer puts out what he calls -- two of

them, in fact -- the "Leadograph" and Mining News and Market Digest.

Another is "Timing of the Market for Profits".

Another one uses his name plus the words "Financial Market Guide".

And so on.

You would think these people were running a
news business, ^{rather} than a financial business.

A Mr. Jolliffe, the thing which interests me very much in this whole situation is the fact that the Commissioner of the Securities and Exchange Commission, in Washington, would write a letter to this Committee stating that the literature issued by the Broker-Dealers Association has improved.

Q That is right.

A That to me is the most important thing.

Q I think you and your Association can take a great deal of credit for that.

A The S.E.C. has not been in the habit of complimenting us.

Q I appreciate that, Mr. Wismer, and in any question I put to you about this literature, I think you should understand that as far as I am concerned, while I am questioning about the literature, I am not so much concerned with that, because I think the telephone

business is much more dangerous.

But has your Board given any consideration to the propriety of presenting what is, in fact, sales literature, in the guise of news? That is what it comes down to. In fact, it is sales literature; it is an attempt to sell a ware, but which is consistently being presented as "news" of mines, oils, and, to a small degree, industrials.

A There is a point which raises there, under the Securities Act. As far as exemptions are given for a registered broker or dealer to act as an industrial counsel without additional registration. Consequently, he does lap to the field of giving advice and information on securities and what is going on at the property, without any extra remuneration.

Q Do you recall the Section to which you refer?

A Yes, Section 18.

Q Section 18?

A Yes.

MR. McTAGUE: Will you read it, please.

THE WITNESS: Yes. This reads:

"Registration as an investment counsel shall not be required to be obtained by,

(a) a bank to which The Bank Act (Canada)

applies, or the Industrial Development Bank incorporated under The Industrial Development Bank Act (Canada), or a loan corporation or trust company registered under The Loan and Trust Corporations Act, or an insurance company licensed under The Insurance Act, or any officer or employee, in the performance of his duties as such, of His Majesty in right of Canada or of any province, or of any municipal corporation or public board or commission in Canada;

- (b) a lawyer, accountant, engineer or teacher whose performance of such services is solely incidental to the practice of his profession;
- (c) a person or company registered for trading in securities under this Act, or any partner, officer, or employee thereof, whose performance of such services is solely incidental to the conduct of the business as such, and who receives no special compensation therefor other than compensation paid or given by a mining, industrial or investment company in respect of any services performed for such company; "

Consequently, you do not have broker-dealers going and getting separate registrations as investment counsel.

BY MR. JOLLIFFE:

Q. By that Section, a broker-dealer does not have to obtain registration as an investment counsel?

It does not follow, does it, that he can, in any way, directly or indirectly, pose as an investment counsel.

MR. Mc TAGUE: Oh yes, it does.

MR. JOLLIFFE: Why does it? I would like an explanation of that.

THE WITNESS: He can say he is an investment counsel, if that is what you mean. But they do not.

THE CHAIRMAN: I think we had better adjourn for five minutes.

---Whereupon a short recess was had.

---Upon resuming.

THE CHAIRMAN: Shall we proceed? Time is running on. I have to leave at 12.30.

MR. JOLLIFFE: Then we will adjourn at half-past twelve.

BY MR. JOLLIFFE:

Q. Mr. Chairman, when we adjourned, I was informed that Mr. Downer had some questions to ask, but

when we adjourned, we were getting from Mr. Wismer a statement and a statement from Mr. McTague, on their interpretation of Section 18(c).

With great respect, I would like to hear a little more about that, because I do not follow the interpretation which has been given, namely, -- well, Mr. Wismer, put in your own language rather than mine.

THE WITNESS: My interpretation is that the broker or dealer may act as an investment counsel without being registered with the Ontario Securities Commission as an investment counsel.

MR. JOLLIFFE: Do you agree with that, Mr. McTague?

MR. Mc TAGE: Yes. That was the official interpretation of the Commission. There was no hope of prosecuting anybody who was a broker-dealer because of material which might be sent out which an investment counsel is permitted to do. Our interpretation was that it was intended to give a broker-dealer or person in the business that right, as "incidental to his business".

That is exactly what it was intended to accomplish.

MR. JOLLIFFE: That is not quite what Mr. Wismer

said -- "incidental to his business".

If one were to accept the words Mr. Wismer used, you would have to extend the same interpretation to "b" of Section 18, and you may say that a lawyer or an accountant may function as an investment counsel without being registered.

MR. McTAGUE: Well, that is quite correct. Nobody disputes that. For the purposes of the Act, we have no jurisdiction over a lawyer, an accountant, or engineer, whose performances of the services mentioned is incidental to the practice of his profession.

MR. JOLLIFFE: Solely incidental?

MR. McTAGUE: Yes, certainly.

MR. JOLLIFFE: And the words "solely incidental" also appear in "c"?

MR. McTAGUE: That is right.

MR. JOLLIFFE: Surely those words have some significance.

MR. McTAGUE: What is the prohibition in the Act? The prohibition in the Act is to stop people, generally speaking, from issuing literature which has to do with stocks, and that sort of thing, unless they

they are registered.

Then there are other people, who, when acting in a certain capacity, do not have to be registered. That is the frame work of it. It is as simple as that to me, and always has been.

We could not hope to get a conviction unless there was a violation of a kind and character where a man was going out of his way to be a qua-broker, incidental to his business. If it was not that, what is "incidental to the business" of a broker-dealer or a broker?

MR. JOLLIFFE: Let us go back to the definition of "investment counsel", in Subsection "g" of Section 1 which reads:

"'investment counsel' means any person or company who engages in or holds himself or itself out as engaging in the business of advising others, either directly or through publications or writings, as to the advisability of investing in or purchasing or selling specific securities:"

Then I gather from the exemption in Section 18 --

MR. McTAGUE: You must remember, first of all, that a person to be in that position before he can do it,

must be registered under the Act, and that there are penalties provided for a person who acts, who is not registered.

Then there are certain other people who do not need to be registered, therefore, they are not subject to penalty.

MR. JOLLIFFE: A person comes within the definition of "investment counsel" must be registered as an investment counsel, unless he comes within the exemption?

MR. McTAGUE: That is right.

MR. JOLLIFFE: And he comes within those exemptions subject only to certain conditions, set out in Section 18, which exempts lawyers, publishers, and so forth. It exempts them subject to certain conditions?

MR. McTAGUE: For instance, if you have a lawyer who is making the representation to somebody that he is acting for some client, and he sends this through the mail, he is exempt, even if it is found out. It is the same with the teachers or engineers.

MR. JOLLIFFE: It is solely incidental to the business?

MR. McTAGUE: I think if you get a magistrate

to deal with "solely incidental" you will have a lot of explanations, and no results.

MR. JOLLIFFE: I am not concerned with prosecutions at the moment. I am concerned with your interpretation of that Section. You may be right, for all I know, but I would like to get your explanation.

MR. McTAGUE: I think what Mr. Wismer means is that he is coping with the literature his people send in under their own regulations and by-laws, and they scrutinize the literature, and they are in a little different position where you have an informational bulletin going out than where you have that which is a specific solicitation. That is the substance of it.

THE WITNESS: That is right, Mr. McTague.

MR. JOLLIFFE: Well, as I understand Section 18, notwithstanding what has been said, the informational bulletin should be incidental to the conduct of the business of a broker-dealer, which is the business of trading in securities and in giving advice about them.

THE WITNESS: Well, Mr. Jolliffe, consider a customers' man of a member of the Toronto Stock Exchange. They are in the position where they must advise clients continually as to whether or not they feel a security

be purchased or sold.

MR. JOLLIFFE: I would say there is no question about that. That is incidental to the business they are doing.

THE WITNESS: The very name "broker-dealer" includes two things, the right to act as broker, as an agent, or as a dealer, as a principal.

Consequently, a broker-dealer on the Street may very often act as the agent for his client in buying securities on the Toronto Stock Exchange.

BY MR. JOLLIFFE:

Q. I am not questioning his right to do that. I am questioning his right to issue a lot of ingenious propaganda, designed to give the impression that he is an independent adviser, when, in fact, he is a licensed broker-dealer.

The purpose of registering investment counsel was to prevent people from doing that sort of thing, unless they were, in fact, --

MR. McTAGUE: I do not think I could possibly agree with that. Goodness gracious, the matter of people sending out informational letters is incidental. I get one every month from A. Ames & Co. and I was getting one every month since there was a Security Act.

That is their business.

THE CHAIRMAN: Is that not the sort of practice which enters into all kinds of other businesses?

MR. McTAGUE: Certainly.

THE CHAIRMAN: The companies send out general information which may assist them in making sales eventually, but it gets them interested in the subject matter. They give them what they think is the broad view, before they get down to cases.

Unless it is done in an improper way --

MR. McTAGUE: You get recommendations recommending investments for the month of August, for the month of July, for the month of June, and not only that, it is published in the papers, by houses of the kind I am talking about.

MR. JOLLIFFE: Mr. McTague, you are not suggesting that in the case of a house like A. Ames & Co., or other houses I could mention, these informational mailings are sent as representing a major portion of their activities?

MR. McTAGUE: I think it does. I think that is why they do it.

As a matter of fact, Mr. Jolliffe, that is part

of their business, it seems to me, and is recognized as part of their business, and if your theory is correct, they would have to ^{be} registered as investment counsel, or they could not say, "We recommend so-and-so."

MR. JOLLIFFE: Surely you realize the difference between doing it as "incidental to the business as a whole", which in the case of A. Ames, is conducted in considerable volume, and doing it on a scale which represents most of the activities of a company.

MR. McTAGUE: I do not recognize any fundamental difference at all. What are you talking about now? Are you talking about Ames, as an I.D.A. house?

MR. JOLLIFFE: You raised Ames; I did not.

MR. McTAGUE: That is the clear intention of the exemption; to recognize in the Act, an activity which was recognized as growing up, which would not require legislation. That is the purpose of it.

MR. JOLLIFFE: "Solely incidental"?

MR. McTAGUE: Yes, certainly.

THE WITNESS: The Securities Act, Mr. Jolliffe, even goes one step further in Section 56.

Supposing, for example, a broker-dealer is acting under his exemption as an investment counsel,

MR. JOLLIFFE: What Section? Section 56?

THE WITNESS: Those disclosures which an investment counsel must make under Section 56, only apply to a registered investment counsel.

Q Yes, I quite appreciate that.

A Which means that a broker-dealer can act under his exemption as an investment counsel, and yet disclose the information required of an investment counsel, under Section 56.

MR. JOLLIFFE:

I quite appreciate the distinction. In other words, a broker-dealer, posing as an investment counsel, can do a lot of things, he would never "get away with" if he was a registered investment counsel.

Do you think that the growth of these informational bulletins, market comments, are due, in any way to the ruling of the Commission in the Canadian securities case and subsequent cases, with respect to mailing, exclusively or substantially, or mainly, to the United States?

THE WITNESS: I do not quite understand your question, Mr. Jolliffe, as pertaining to the Canadian securities case.

Q There is a chain of decisions by the Commission beginning with, I think, the Canadian securities case,

some years ago, in which it has been made apparent to broker-dealers, that it is dangerous to send a very large or disproportionate part of their mailings to the United States, which, of course, has become very apparent in some cases, due to the size of the mailings.

You are familiar with that chain of cases?

A Yes.

Q My question is this; does the growth of this practice of sending out informational bulletins every week or every two weeks, rather than heavy mailings in one great splurge, have any connection with the cases to which I have referred.

THE WITNESS: I do not think so because from time to time, prior to the Canadian securities case -- Mr. McTague is more of an expert on this than I am -- there were out-breaks of large mailings to other jurisdictions, both in the United States and Canada.

BY MR. JOLLIFFE:

Q. And then, for a number of different reasons, there were a number of suspensions or cancellations following the heavy mailings?

A Yes.

Q Now, as Mr. Lennox has said -- and as is apparent from the files -- the trend recently has been toward

political mailings rather than very large mailings;
is that not so?

A Yes.

Q The same proportion -- we are not discussing
at the moment what proportion, but some proportion of
those periodical mailings are going to the United States?

A Yes, from some members.

Q Would you say that some members do not send any
to the United States?

A Oh, there are a considerable number who do not
send any to the United States.

Q There are a considerable number of your members
who do not solicit business in the United States?

A Yes.

Q Would it also be true that there are a number of
your members who do not solicit business in the other
provinces?

A I would say only those members of the Association
who are acting almost as brokers -- as agents.

Q Would you explain that?

A I would say that when those members of the
Association were acting almost entirely as brokers --
as agents.

Q They are not the only ones who do not solicit
in other provinces?

A Yes.

Q Let us clear this up now. Perhaps we had better narrow it down to your members who are engaged in primary distribution.

A No, we cannot narrow it down to them, because I know of one firm which is considered to be engaging in primary distribution to the public, acting only as an agent, and does not solicit in other provinces at all.

Q That is what I want to get at. I want the facts about those who are engaged in primary distribution.

A Yes.

Q We are speaking now of members engaged in primary distribution from time to time?

A Yes.

Q You tell me if this is correct; some of them solicit exclusively in Ontario? Is that right?

A Right.

Q Some of them solicit in the United States, as well as in Ontario?

A That is right.

Q Some of them solicit in other provinces as well as in Ontario?

A Yes.

Q And some of them solicit in Ontario and the United States, and in other provinces?

A Correct.

MR. McTAGUE: And some do not.

BY MR. JOLLIFFE:

Q. That was my first question. Some of your members engaged in primary distribution solicit only in Ontario? That was the question I asked you and your answer was "Yes".

A And Mr. McTague's proposition is that some do not solicit anywhere.

Q And I say, I am aware of that. Some of the others do not engage in primary distribution?

A That is right.

Q They act as brokers?

A Yes, they act as brokers -- as agents. But you can act as an agent -- as a broker -- and still be engaged in primary distribution.

Q And some of your members do not solicit at all?

A That is right. I can name one firm. It is not very well known. We never peruse any literature for them, because they never insert anything in the newspapers, but a box ad.

Q I think I know the one you mean.

I would like to turn for a moment to this question which came up yesterday, and at which we

broke off, in regard to these disclosures, and if it is the fact, that the broker-dealer is acting as a principal? Is that Section 54?

A Yes.

Q Did I understand you to say that Section 54 means, in your opinion, that he need disclose that information only once?

A Yes, it says:

"(l) Where a person or company registered for trading in securities under this Act, with the intention of effecting a trade in a security with any person other than a person registered for trading in securities under this Act, issues, publishes or sends a circular, pamphlet, letter telegram or advertisement, and proposes to act in such trade as a principal, such person or company shall so state in the circular, pamphlet, letter, telegram, or advertisement or otherwise in writing before entering into a contract for the sale or purchase of any such security and before accepting payment or receiving any security or other consideration under or in anticipation of any such contract."

MR. JOLLIFFE: I will ask the Chairman if he

will be good enough to look at Section 54 (handing document to Chairman).

THE CHAIRMAN: But do not expect me to give a snap opinion on it.

MR..JOLLIFFE: No, but I would like you to think about it.

THE WITNESS: I feel myself that he only needs to tell him once. We do not rely on that information. We require them to show they are acting as principals in every case, in their literature and advertisements. So if your interpretation is right, we are still within the law.

MR. JOLLIFFE: I have not said what my interpretation is, but I was a little startled by this. You think, from a legal position, it is desirable for them to disclose at all times?

THE WITNESS: Yes.

THE CHAIRMAN: Your point, Mr. Jolliffe, is this; suppose in the case of a series of circulars being sent out, the question is, whether he would have to mention the fact that he was a principal in all of the series or whether mentioning it in one of the series is sufficient?

MR. JOLLIFFE: Yes.

THE CHAIRMAN: I do not know. There is some question about the interpretation of that, perhaps.

MR. Mc TAGUE: Whatever the document was which resulted in a sale. He had to do something before the sale.

THE WITNESS: We regard it as a very serious matter, because, if the member of the Association does not comply, he can be prosecuted.

Secondly, there is recision of the contract, under Section 55.

THE CHAIRMAN: I would say that the policy of the Association in insisting upon that being contained in all of the circulars, appears to me to be a sound policy. Whether it is necessary or not, it seems to me to be a sound policy.

MR. DOLLNER: A good move.

THE CHAIRMAN: Yes. It may be that the Act even goes that far in itself.

MR. JOLLIFFE: To me it is very debatable.

THE CHAIRMAN: Shall we adjourn now until 2.15? It is suggested we rise at 4.00 o'clock this afternoon.

MR. JOLLIFFE: That is right.

---Whereupon the witness temporarily retired.

---Whereupon at 12.35 o'clock, P.M., the further proceedings of this Committee adjourned until this afternoon at 2.15 o'clock.

AFTERNON SESSION.

Toronto, Ontario.

Thursday, August 30, 1951.
2:15 o'clock, p. m.

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The further proceedings of this committee re-convened, pursuant to adjournment.

All parties present (excepting Mr. Janes).

Same appearances as heretofore noted.

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THE CHAIRMAN: Gentlemen, we will now resume.

WILLIAM M. WISMER, a witness previously heard, now recalled, and who, having been already sworn, continues his testimony as follows:

BY MR. JOLLIFFE:

Q Mr. Wismer, this morning I suggested that some Brokers-Dealers are holding themselves out as investment counsellors, rather than brokers-dealers, and giving the impression that they are essentially investment counsellors, and only incidentally brokers-dealers, rather than giving the impression that they are essentially brokers-dealers, and only incidentally investment counsellors.

Just so it will not be thought I was exaggerating

the circumstances, I am going to cite to you a specific example of what I am talking about. I want to see whether you agree or disagree with me that this represents holding oneself out as an investment counsellor.

I have here an advertisement to be used in a special issue of a Toronto publication, by a broker-dealer, perused by your Association in March of this year and edited by one of your officers.

Without giving the name of the broker I will read everything else appearing in the advertisement.

"The Mining Broadcaster". That is the title.
"A Counselor Service: Without Cost or obligation to you. The world Markets are our territory."

That was edited to read:

"The Security Markets are our Territory."
"We offer you a service that includes a weekly bulletin -- The Mining Broadcaster supplemented by Special Bulletins -- On Spot -- as the occasion arises."

That was edited to read "On the Spot".

"We tell you when to buy -- we tell you when to sell."

That was edited to read:

"We recommend when to buy -- we recommend when to sell."

"A Complete Counsellor Service -- Without Cost or Obligation. Our motto: 'Investigate before Investing.' Write us for Full Detailed information."

Then follows the name of the broker-dealer, his address, the name of the president and the telephone number.

I am suggesting to you that that advertisement, all of which I have read to you, constitutes a broker-dealer holding himself out as an investment counsellor. Have a look at it, yourself.

A My comment would be that, the fact that he has an exemption to act as an investment counsellor, as incidental to his business as a broker-dealer, would make this quite all right. He does not say that he is an investment counsel.

Q He says everything else but. He says: "A complete counsellor service." Does he not say that?

A The point is that if the law of the Province of Ontario wanted a broker-dealer to be registered as an investment counsel then it would require that; but, this is a specific exemption.

Q Subject to certain conditions. However, we have been over that before. I have given that example as

evidence , and I think it is pretty clear evidence, I suggest, of the suggestion I made.

Is there anything whatever in that ad. to indicate, or, even, to hint that that company has any securities to sell or is engaged in the business of a broker-dealer?

A Not in this advertisement, but this is part of his business as a broker-dealer --- only part of it.

Q That may be so, but there is nothing in the advertisement to disclose that fact.

BY THE CHAIRMAN:

Q On reading Section 18 (c) , again, there are two elements in the exemption.

"(c) A person or company registered for trading in securities under this Act, or any partner, officer or employee thereof, whose performance of such services is solely incidental to the conduct of the business as such, and who receives no special compensation therefor "

There are the two elements -- "solely incidental" whatever that may mean.

I suppose there is no doubt in this case that has been under consideration, that he would receive any special compensation in respect of the services performed. These circulars are free. I suppose they do not even have

a subscription price?

A No.

THE CHAIRMAN: So that part of it would be all right, down to those words, "solely incidental."

Is that not right?

MR. JOLLIFFE: Yes. I think so. I think you are right, Mr. Chairman. It comes down to the meaning of those words "solely incidental", although there is another consideration which I would think it would be proper for the Association to take into account, that is, whether it is ethical conduct to make a statement even if it is within the legal rights of the broker-dealer to make that statement, that is, a statement calculated to mislead, and a statement calculated to give the impression that a man is an investment counsel when, in fact, he is a broker-dealer. That is a misleading statement?

THE CHAIRMAN: In that advertisement which you have just read, what is there which you say might stamp him as an investment counsel? They hold themselves out as being ready to advise but in this advertisement, itself, there is no advice given. "Counsellor Service, The Mining Broadcaster". This really describes what they can supply. "Counsellor Service, without cost;

"weekly bulletins", "An offer to analyze your holdings".

Q Mr. Wismer, what you would say is that the business of making an alysis of peoples' holdings, if they want it, is incidental to the broker-dealer's business?

A Yes, I would.

Q Is it not a common practice in the regular brokerage business, quite aside from this particular special type of dealings which we have with broker-dealers, for brokers to analyze peoples' holdings and generally discuss the merits or demerits, and what would be advisable for them to buy, in view of their general financial position and all other circumstances?

A Yes.

Q That is very commonly done in the business?

A Yes.

Q Is there any reason why that should not be done in the ordinary brokerage business?

A I cannot see any reason.

Q You do not see any reason why that could or should not be done?

A No.

Q Whatever the interpretation may be of these, perhaps, rather equivocal words, the fact is that it has been done for as long as the brokerage business has been in existence, and it has been the practice of brokers to advise when their advice was

asked for?

A Yes.

Q And where a broker is acting in the ordinary sense as a broker, as an agent, he is supposed to be free to advise without having any personal axe to grind? That has always been the general position

A That is my understanding.

Q of the broker acting as an agent; and in view of that general practice, which has been well known and accepted in the brokerage business generally, when we are deciding on the meaning of that expression, I do not know whether or not we can take that into consideration. However, I suppose we are not a court here to decide on what is the meaning of the Act. If we do not think the Act is specific enough we might consider some recommendations to make it more specific, one way or the other --- that is, decide whether it is better to broaden it or to narrow it.

MR. JOLLIFFE: Whatever the Act may mean, I do not see any objection whatever to the distribution of informational bulletins, analyses and the like by a broker-dealer where it is in fact but a part of or incidental to the purposes of his business, but I do see a real objection to a broker-dealer, whose business is that

of a broker-dealer publishing advertisements or issuing literature calculated to give the impression that he is an investment counsel rather than a broker-dealer.

MR. McTAGUE: I wonder why? Does the Act not give him the right to hold himself out, if he wishes, as an investment counsel?

MR. JOLLIFFE: I am not arguing about it, but I do not think it does.

THE CHAIRMAN: If it does, the question is, I suppose, should it; and if it does not, the question is, should it?

MR. JOLLIFFE: I hesitate to argue with the draftsman or the author of the Act about such matters, but if it means what Mr. McTague suggests, I do not understand why the words "solely incidental", were put in there.

MR. McTAGUE: You understand why the word "incidental" was put in. I do not know whether the word "solely" has any particular meaning or not. At any rate, in respect of a man who is in the business of buying and selling securities as the principal or as an agent, that is his business and is part of his business. The Act contemplates that he has the right to give

people advice, and so on, in respect of securities. After all, part of his business is getting business. If he is not trying to get some business which is not related to the brokerage or broker-dealer business, it seems to me it falls within the exception. That is not the intention, but that is not important.

THE CHAIRMAN; But, when the point comes of offering for sale any particular securities or any particular security, then he is obliged to say that he is a principal.

MR. JOLLIFFE: At least once.

THE CHAIRMAN: And I am not so sure that is the proper interpretation. There may be something to be said for another interpretation, but, at any rate, that is what the broker-dealers are doing.

MR. McTAGUE: It is not only what the broker-dealers are doing, it is the common practice as far as the I.D.A. and everyone else is concerned. Every time they put out something which could be described as a form of solicitation you always find it there. For instance, there is something rather of considerable importance to them, if one looks at another facet of the Act. As long as they say they are acting as principals, they

have the right to act as agents, It is clear in the Act. They do, under the wording of the Act, seek to protect themselves by declaring at all times they are acting as principals. That is accepted.

MR. JOLLIFFE: It is the prudent course.

MR. McTAGUE: Pardon?

MR. JOLLIFFE: It is the prudent course.

MR. McTAGUE: Yes.

THE CHAIRMAN: I wonder what harm is done by this sort of literature? We are concerned with whether or not it is detrimental to the public. These people say they will "recommend, when to buy and when to sell," and make an analysis of your holdings, if you want it, and they will give you an opinion, if you want it. You do not need to take their opinion.

What is the danger in that?

MR. JOLLIFFE: When the 1945 Act and the 1947 Act were prepared, apparently more importance was attached to this matter of investment counsellors both with a view to preventing people who had something to sell posing as investment counsellors, and with a view to requiring the investment counsellor to make very full disclosure when-

ever he does have any interest.

If one looks at Section 5c he sees how stringent are the requirements.

THE CHAIRMAN: An investment counsel is a man who is paid for his advice. These people give advice as a free service and they are obviously in the securities business.

MR. McTAGUE: What was actually taking place was that people who were holding themselves out as investment counsel were actually taking positions and selling their own stock. It was proved in case after case. They were prosecuted and some of them received pretty serious sentences.

THE CHAIRMAN: And they did not disclose before or at the time of the sale that it was their stock they were selling?

MR. McTAGUE: No. They were selling securities without being registered so to do. They were acting as broker-dealers. Certainly that happened in several cases. That was publicized in some of the well-known papers around on the street, -- Flash and Mr. McCarthy's paper -- and I do not know how many others.

MR. JOLLIFFE: Does it not follow, Mr. McTague, that a broker-dealer who gives advice,--who takes advantage of the exemption in clause (c) of Section 18, --- but who may not be acting as a principal in an offer, may, nevertheless, do some trading on his own account in a way which section 56 seeks to prevent?

MR. McTAGUE: I do not know. I do not think he would be advising people and actually trading on his own account.

THE CHAIRMAN:

Q Have there been any complaints about this particular sort of literature, Mr. Wismer?

A None whatsoever.

Q Has there been very much of that type of literature sent out?

A There is quite a bit of it now, yes.

Q Have you any idea how many people take advantage of this offer of advice, analysis, and so on? Was that productive of very much interest?

A I would say about one-half the membership take advantage of it through weekly market letters and bulletins.

Q No ; I meant how many customers take advantage ? How many customers write in and say they want

their portfolios analyzed, or they want advice with respect to this, that, and the other thing? Do you know how many people do that?

A No. I would not know, off-hand. There are a considerable number.

Of course, I can tell you this, that, under The Securities Act, if a broker-dealer is in the habit of trading with a member of the public, he then is able to call him on the telephone at his private residence. Supposing through the investment counsellor service which he puts out, over a period of months he is able to make five, six or seven trades, he then could be considered, perhaps, as being in the habit of trading with him. He would become a client of the house. That is one way they develop a clientele other than by sending out direct mail and getting coupons in return.

MR. JOLLIFFE: Yes.

THE CHAIRMAN: If they send out the direct mail and get a coupon in return then, as I understand it -- they can then telephone that person?

THE WITNESS: Yes; provided the coupon requests information on a specific security.

Q Yes; but, as a result of this sort of general informational bulletin, they would have to show that

they were in the habit of trading before they could use the telephone? Is that the way it works out?

A Yes; to call them at their private residence.

There was one isolated case which I remember in which a member of the Association put out a pamphlet recommending many securities. The pamphlet was prepared very well. He charged \$1.00 to cover postage. The Ontario Securities Commission took objection to that charge of \$1.00 because they felt that it was a special compensation. Consequently, he discontinued the charge.

BY MR. JOLLIFFE:

Q They felt it took him outside the exemption?

A Yes. They felt that it might, depending on what was considered to be "compensation."

BY MR. GRUMMETT:

Q Mr. Wismer, in connection with broker-dealers and investment counsel, do you not think there is an overlapping of activities? We designate an investment counsel as being such-and-such, and then you commit him to engage in activities which specifically belong to the broker-dealer class. Is there not an overlapping which tends to confuse or mislead the general public?

A Certainly there is an overlapping of the two but, as I mentioned to the Chairman, I have always understood that acting as an investment counsel was incidental to the work of a broker-dealer, or a broker, or an investment dealer.

Q Is it?

A Yes. I think it is, and it must be. I do not see how you can separate them because a broker-dealer, or a broker, must have the privilege of being able to recommend the purchase and sale of securities to his clients; otherwise, he cannot function properly.

Q That is straight salesmanship, -- is it not?

A Yes.

Q An investment counsel is looked upon as someone who, in an independent way, can analyze the holdings of a client and advise him on those holdings?

MR. JOLLIFFE: And he is paid for it, as a lawyer is paid fees. But a lawyer is not supposed to be acting for another party at the same time secretly, or for himself, in his own interest.

MR. GRUIMETT: Yes. The advice is independent and is open and above-board, supposedly.

. THE CHAIRMAN: That is right

THE WITNESS: You get the definition of "investment counsel" broken down into two types. Type two is the type who does make an analysis of portfolios. Type one is the broad type as defined under the definition.

MR. JOLLIFFE: Yes; that is right; but, even that broad type is restricted by section 56.

Q Section 56 applies to both types of investment counsel?

A Yes.

MR. GRUMMETT: No distinction made in the section.

BY MR. DONNER:

Q We have heard a great deal about the complaints from the United States with respect to mailings, and telephone calls. We have heard very little about the complaints which are made here.

I am looking at the issue of May 12, 1951, of the Financial Post, and I find an article dealing with that particular subject. I would like to read one or two paragraphs.

"Once again stock racketeering has reached major proportions. The current flare-up is distinguished from previous ones chiefly

by the fact that this time the key offenders are few in number. But their business is enormous, chiefly by the mail-telephone technique with U.S. citizens."

It goes on to say that these objectionable operations are,

"....seriously damaging our good name in the United States at a time when good relations between these countries are immensely important. They are defrauding some Canadians also . They are a dangerous influence in the brokerage community. Because they have the racketeer mentality, their efforts to use their power and wealth to subvert government might have most poisonous consequences."

We have the same thing from The Investment Analyst, the issue of May 16, 1951, It deals with the same sort of thing. So, it does not resolve itself into only the objections from the United States. We have the same objections from the Financial Post, an old financial paper of this country. They quote the Toronto Daily Star and some other newspapers in support of their views. What have you to say about that sort of thing? What about these few? Is there any way you could get rid of those racketeers who are in the centre, "fronts",

or "backs," or whatever you want to call them --- the people who are causing all the trouble?

A Our Board of Governors is keen on having all underwriters and optionees registered.

THE CHAIRMAN: I think it was Mr. Lennox who suggested --- at any rate, somebody suggested -- that all options should be through some registered broker-dealer direct.

THE WITNESS: Yes.

MR. JOLLIFFE: If there is to be a public offering.

THE CHAIRMAN: If there is to be a public offering in course.

THE WITNESS: Yes. We agree with that proposition.

Q You think that would be effective to some extent in eliminating the trouble?

A It would go a long way towards eliminating it.

BY MR. DUNNER:

Q How are you going to get around it without licensing or registering the promoters? There are some who certainly promote for the benefit of themselves,

as far as I can see. I am referring to some of these "fringe operators".

Is there any way around it? Is there any way in which you could catch them?

A There is a way around it but if I were to mention it, it would send a cold chill down the spine of Bay Street, I am afraid.

Q It might be a good idea.

MR. VILLENEUVE: I think we should know it.

BY MR. JULLIFFE:

Q What is the way around it?

A This is only my personal opinion. It has not been discussed by the Board of Governors. If the Ontario Securities Commission were given the discretion to refuse an acceptance for filing; if, in the public interest, any officer, director, promotor, underwriter, or anyone in any way directly or indirectly connected with the company, was objectionable, it might go a long way.

BY MR. DOWNER:

Q It would have some power, certainly, and it might be very effective.

THE CHAIRMAN: Yes. That would be a pretty difficult thing for an administrator to carry out. Does he not have to have something a little more difficult than that --- some rule?

A Yes; that is the difficulty.

MR. JOLLIFFE: It is very severe. It is the same sort of power as that which is exercised by police commissioners in respect of granting licenses. It is pretty drastic and arbitrary.

MR. DOWNER: The same power we give to The Liquor License Board --- the same power as that which we gave them in the Act last winter.

MR. VILLENUVE: The man who is trying to operate openly and above-board would not be affected by that.

MR. McTAGUE: I think what he says would go a long way, along the lines you suggest. I think it is very objectionable. You put into the hands of somebody who is arbitrary, power to act in an arbitrary fashion, and you say it should not hurt the man who is above-board, and so on, but it puts some human being in the position of giving judgment with respect to who

is above-board in respect of those things, without any rules and, if that is the case, speaking personally, I would not accept a position as administrator and have that type of power because I do not think it is at all right.

MR. DONNER: I agree with you on the principle. I think with respect to every line that should be so, not only in securities, but all along the line. They should have the right to try. Admittedly, there are innocent men who have been found guilty; nevertheless, I was asking how we could deal with it. Mr. Wismer gave you a way.

MR. McTAGUE: He gave you a very effective one. There is no question but that would get to the root of the matter, that is, by giving the power of discretion. Whether that is the way to legislate it, or the way to handle it, I do not know. I have my doubts about it.

THE WITNESS: I might say I am not recommending it. You asked me if I knew any possible way and I suggested it, but I have not thought out what the implications would be.

MR. JOLLIFFE: We understood that.

MR. DOWNER: Yes, we understood that.

MR. JOLLIFFE: I am just wondering, following up what Mr. McTague said, if a system of that kind might not produce even more "fronts" than there are today and even a more elaborate system of "fronts." It would mean that no person who is not acceptable to the Commission could be openly identified in any capacity -- he would stay out of sight.

THE CHAIRMAN: The other great difficulty is that when you give an administrator, who is, in a sense, a civil servant, discretionary powers of that kind, he may suspect quite unjustifiably certain persons, without any evidence at all. He may size a fellow up and say, "I do not like his looks. He is not the sort of fellow I think should be in this business because I think I size him up as being shady." Therefore, because that man may be connected in some direct or indirect way with a promotion, the whole promotion cannot go through. Nobody could be licensed to sell it. That remedy depends on the personality of the man who is administering it. You have such great divergencies, and viewpoints about these matters. Some commissioners might take a broad view; while

others might take such a narrow view that they would dry up the business unjustifiably.

The other great difficulty is that the Commissioner, being a civil servant attached to the Department of the Attorney-General, if the effect of his policy becomes detrimental in some respects then the government gets into the embarrassing position of perhaps being asked to review some of these decisions. Up to the present time, as far as I am concerned, I am able to and I have kept out of the administration of The Securities Act. That is done by a commission. They are always free to discuss matters of general policy but, as to any particular application, or whether a certain man should be denied or allowed, I do not think I should get involved in that. I think it is very dangerous if politics gets into that sort of thing. It is very dangerous. I think if you give the administrator too much power, without any appeal, or without any recourse at all, that you are simply placing in the hands of a dictator the destinies and the rights of a lot of people who might be all right. That is a matter of which I would be afraid.

THE WITNESS: It would happen, I think. There is no doubt about it.

MR. McTAGUE: As I said in the beginning, I spent a great deal of time on this subject trying to find a way of giving discretion to somebody in control, because, after all, it is in one sense a matter of shifting responsibility, as far as legislation is concerned --- trying to find a way of getting it into legislation. You are confronted, once you start working on that problem --- which is a very difficult one --- with, "what do you mean by a promoter"? I know of a case --- I think it is a judgment of the Privy Council, and I refer to a well-known case --- where the most important fact of the decision is to decide who is a "promoter" in respect of a certain company. The "promoter" in that decision is not the animal you are talking about at all. It is not somebody who started and traded, established a company and then started to trade; it is somebody who has bought in at some stage and he has something which, in one sense, he is promoting the sale of to the public for his own benefit through agents, and you are worried about the fact that these agents are hidden. That is the man who dominates the situation. It would be a very, very fine thing to do something about it, but I would hesitate to accept the proposition of

doing it otherwise than by laying down the rules with respect to who this promoter is, instead of leaving it to somebody to do.

THE CHAIRMAN: Very often the promoter is simply a man who knows about some mining property which appears to him to be a saleable proposition and he brings it into contact, with some group of people who might act as directors and perhaps put up some of the initial money, and gets the organization set up, and brings parties together. He is a sort of agent, in the sense, of bringing parties together, and, as a result of that, he gets a commission or he might get a share of the stock. Then he is out. He is not interested, perhaps, in floating it beyond that. He would be referred to as a "promoter".

MR. McTAGUE: Yes.

THE CHAIRMAN: "Promoter" is a very broad and loose expression which covers a great variety of activities which result in bringing about some sort of venture, getting it consolidated, and getting it started.

MR. McTAGUE: We are really talking, are we not, about somebody who is in the background without

being brought under the rules of the Statute which apply in the case.

MR. DONNER: That is right.

MR. McTAGUE: And who, being in the background, dominates the situation by being able to get people who are in the business legitimately to do his will, and profit by it?

MR. DONNER: That is right.

MR. McTAGUE: That is the man about whom we are talking.

MR. DONNER: That is the fellow we would like to get rid of.

THE CHAIRMAN: I would think the steps being taken as outlined must have been effective, to quite a large extent, in accomplishing the purpose.

MR. JCLIFFE: Just a minute.

Is it not quite possible for a promoter to function as the moving spirit in the organization of the company, the acquisition of properties, the public offering of shares? Is it not possible for him to do that quite legitimately?

MR. McTAGUE: Oh, yes.

MR. JOLLIFFE: Nevertheless, he is still outside the four walls of the Act?

MR. McTAGUE: Yes. Of course, he is in a fiduciary relationship with respect to the people with whom he deals, which, at that stage, is not the public at all.

MR. JOLLIFFE: There is, I think, great discretionary power vested in the commissioner now.

Section 8 reads:

"The Commission shall suspend or cancel any registration where in its opinion such action is in the public interest."

That raises the question of who is to be registered --- the broker-dealer, the salesman, the investment counsellor and the security issuer. That is all?

MR. McTAGUE: I think that covers it pretty well.

MR. JOLLIFFE: Those are the four.

MR. McTAGUE: The security dealer, the broker-dealer, the broker and the investment dealer.

MR. JOLLIFFE: The security dealer, the salesman, the security issuer, and the investment counsellor all require registration. Who else plays a vital part in this business who does not require registration?

MR. McTAGUE: Chartered banks play a very important part in it. Certain financial groups of the ~~best~~ repute play a pretty important part in it.

MR. JOLLIFFE: And sometimes members of the legal profession.

MR. McTAGUE: Yes, sometimes lawyers --- and, sometimes not.

BY MR. DONNER:

Q. What percentage of the mail which goes from Bay Street dealing with securities has to pass through your hands for perusal, Mr. Wismer?

A. All of the advertising and literature issued by members of our Association, except the Toronto Stock Exchange, must be perused.

Q. I realize that, but how much would go out from Bay Street from people or houses which do not belong to the broker-dealers?

A. There are 63 security issuers registered in

the Province of Ontario who do not come under cur jurisdiction, who send out mail.

Q Here is an important matter. You keep control of the ones whose mail goes through your hands; you can peruse all their mail, watch it for fraud, misrepresentation and that sort of thing, but these 63 security issuers get off scott free, apparently.

A I do not know how extensive their mailings are, because they come under the jurisdiction of the Commission. I have no knowledge of that.

Q These fringe operators, when objectionable mail goes out, must come from that group but not from your group? That is the only inference you can draw.

MR. McTAGUE: The promoter does not send out any mail under his own name or anything of that kind.

THE CHAIRMAN: You are talking about the securities issuer.

MR. DOWNER: Yes, I am talking about the securities issuer, not the promoter. You see, after all is said and done, if all the members of your Association have to send their mail in for your perusal, and it is changed or amended, brought up to standard, then the mail which is not up to standard

must come from that other group.

THE WITNESS: No; I would not say that, Mr. Downer, because there are some people who do not think that we are tough enough in our perusals. They still find things objectionable, that perhaps we allow to go through.

Q But, these very objectionable cases --

A I cannot for one moment say the group of the 63 securities issuers, who are under the jurisdiction of the Ontario Securities Commission, are the offenders. They may be, but there are so many different interpretations as to what literature should be like.

Q Does their mail go anywhere for perusal?

A I do not think so.

Q Would it not be a wise thing to have all the mail, having to do with securities at least, go some place for perusal, whether it goes to your place, to your offices, or to the offices of the Securities Commission?

MR. McTAGUE: Mr. Downer, it used to go to the Securities Commission. They used to peruse mail and pass on it, before it was allowed to be sent out, but that turned out to be a very objectionable procedure

from the point of view of the government, because the people who felt they were aggrieved over the literature simply placed the blame on the government, because it was a government agency which had passed and approved it.

Q Then, would it not be a good idea to set up another organization similar to the Broker-Dealers' Organization, and call it the Securities-Dealers' Organization? That is another point to work on, Mr. McTague.

MR. JOLLIFFE: When Mr. Lennox was testifying, he told us that there was filed with the Commission this literature, previously edited by your organization. He told us, also, that the investment counsellors file their literature, apparently voluntarily, but it is not perused unless there is a complaint. I think we neglected to ask him about the securities issuers.

MR. McTAGUE: I think the securities issuers get out their literature. I think that they probably did it as they used to, -- in a voluntary way. I do not know that that was a 100% practice, but some of them did send it to the Registrar. It is not scrutinized

at all. It just goes out, that is all. Their theory is, of course, that they are held to account for it under the law.

MR. JOLLIFFE: As a matter of fact, Mr. Downer, with regard to objectionable literature, there were two cancellations by the Commission in February of this year, based on objectionable literature. I do not know whether they were members of the Broker-Dealers' Association. Mr. Wismer would know. There are two of them.

MR. DOWNER: That is action after the harm is done. The best thing would be to stop it before it gets that far.

BY MR. JOLLIFFE:

Q Were they members of the Broker-Dealers' Association?

A Yes; but that was in connection with literature which was not submitted for perusal. They went ahead and used it, without having it perused.

BY MR. GRUMMETT:

Q In other words, they by-passed you?

A Yes.

BY MR. DONER:

Q Do you think it would be a good thing to have all literature perused?

A I think it would be a good thing to have all literature of all members perused.

Q You are all "in the pot" together; in other words, if these other people do things which are not on the up-and-up, you are blamed because the general public puts you all in together. Would it not be a good thing if your literature was all perused, and therefore, you would have a check on it?

BY MR. McTAGUE:

Q Mr. Wismer, I think it is a fact that the literature of the members of the Toronto Stock Exchange is perused there -- is it not?

A Yes.

Q That was done in the Toronto Stock Exchange, long before you came into existence? I do not remember about the Investment Dealers' Association. Do you remember?

A I do not think they peruse their members'

literature, because the Investment Dealers' Association has been able to engender such a degree of responsibility in their members, that they do not need to. That is what we hope to do some day.

THE CHAIRMAN: And I would give you credit for this; that in a very short period I think you have made great strides.

MR. DOWNER: I think the Broker-Dealers' Association has made magnificent strides.

THE CHAIRMAN: There is no doubt about that. With respect to the securities issuers, I do not think we have had any suggestions from anybody so far that they have been engaged in telephone operations. A telephone operation is carried on in a broker-dealer's office, where they have a number of telephones. There is quite an investment in the equipment which is involved, and that sort of thing.

MR. McTAGUE: There have been securities issuers who have done it.

MR. JOLLIFFE: Surely the door is open. They can employ registered salesmen.

MR. McTAGUE: Yes.

MR. JOLLIFFE: They could do everything a broker-dealer can do.

BY MR. DOTNER:

Q Is there not any way in which these people could be linked up with the broker-dealers in an association?

A That was discussed when the Association was formed. Some of the group felt that the securities issuers should be brought into the Association, but the Board of Governors now feel that they do not want to accept the responsibility of suspending or expelling a member of the Association -- a securities issuer -- when it involves the rights of perhaps two, three, or four thousand shareholders. That is a matter which should rest with the government.

THE CHAIRMAN: It is quite a different problem.

THE WITNESS: Yes.

MR. JOLLIFFE: It is a different animal.

MR. McTAGUE: I will give you gentlemen some idea

of a very peculiar side of the problem. With respect to the securities issuers, its main reason, in the case of a company, for wanting to sell its own stock, is because it thinks it can do it cheaper. They do not want to have to pay commissions. The theory is that whatever they sell, short of what a salesman gets, goes back into their Treasury. They feel that they are doing an important job in the development of a particular property -- and that is quite correct. They are supposed to be,-- and traditionally it has been that way,-- more or less exempt from the rules and so on, because of the fact that they want to save money. It is the case of the little fellow who feels that he has a good property, and it is going to be put over, and does a lot of honest work on it. You try to control them. Once you get into that you will hear all the members of Parliament from around the mining districts, when they come in, say, "Here, this is not the big fellow, but this is somebody who is trying to do it in this way, and now you should not interfere, you should not make anything hard for him", and so on.

There is a lot of merit in the theory. I do not know of any of them who have been successful in

bringing a property through to production. I do not know that there were any in my time. I think there were some who started out in that way, who did go to brokers or broker-dealers. They feel that they have that right. There are a lot of things to be said in favour of it, you know, that they should not be subjected to the rules.

MR. DONNER: There may be some things said for them; on the other hand, you made the statement that they have not been very successful in bringing anything up to the top.

MR. McTAGUE: Practically, I do not think they have.

MR. DONNER: In that case we would be doing a service to the public if we were to say, "You must conform to certain rules and regulations and set up an organization", and let them regulate themselves.

MR. McTAGUE: We talked about the possibility of making an arrangement whereby they would be brought within the jurisdiction of this Association.

What would have them taking pretty well everything which was left. There were very wide differences of opinion.

MR. DOWNER: Do you think, Mr. McTague, that this group should be allowed to continue on their merry way, and the other group be governed by rules and regulations, and have to take all the blame for what they do not do?

MR. McTAGUE: If you try to include them in this group, you seem to have almost immediately a bit of conflict of interests. They are the people who do not want to have any association with the broker-dealer, because that means commissions, and so on. If you bring people who have those sentimental ideas within the jurisdiction of this, we will probably have a lot of trouble.

MR. JOLLIFFE: Incompatibility, at least.

MR. McTAGUE: Yes.

BY THE CHAIRMAN:

Q At least they would be subject to the juris-

diction of the Commission?

A Yes.

MR. McTAGUE: Yes.

BY THE CHAIRMAN:

Q And, where there are 65 of them, there are only 65 issues, whereas the broker-dealers are dealing with a lot of issues?

A Yes.

MR. DOWNER: But, a lot of the things we hear said about the broker-dealers, do not belong to this category at all, but belong to the others.

MR. McTAGUE: Yes.

MR. DOWNER: I do not think it is quite fair that you should be castigated for all the wrongs and the other fellow get off scot-free.

MR. JOLLIFFE: Where is the evidence of objectionable conduct, so far as the securities issuers are concerned? I do not recall very many cancellations of securities issuers' registrations.

MR. McTAGUE: There have been some.

MR. JOLLIFFE: There have been a few.

I have been through all the published decisions of the Commission since the Bulletin was first brought out in January, 1949, I think, and the majority of these decisions relate to broker-dealers and salesmen.

MR. McTAGUE: I am referring to the time immediately before that. There are some in respect of securities issuers.

The securities issuer, or the company, which is not within any one of these associations, where they have no jurisdiction, is also a great place of refuge for the fellow who cannot get registration. It is a great place of refuge for him because he goes in there. There is nothing to prevent him being the president or an officer of a particular mining company. He is not registered as far as that is concerned. He has a right, as an officer, to make sales.

MR. JOLLIFFE: Only if he is designated.

MR. McTAGUE: Oh, no; there are certain of them have the right by virtue of their position. You will

find cases going back for a long time, where the Commission would not permit the sale of that stock until a particular gentleman was removed from the position and got out. I know that.

MR. JOLLIFFE: I understand from Mr. Lennox' evidence that that is still the case, because he assured us that the same scrutiny is applied to the record of a designated officer for securities registration as would be applied for registration of a broker-dealer. Is that not your understanding?

MR. GRUMMETT: Yes.

MR. McTAGUE: Yes. I would assume that.

MR. DOWNER: With respect to broker-dealers, if one chap tried to get away with something, another one would certainly take it upon himself to make some representation about it.

What about this other organization? In this other organization there is no reason for one to bother about what the other does.

MR. McTAGUE: Yes.

MR. GRUMMETT: It would be rather difficult

to set up the securities dealers under an organization, for the simple reason that, as a general rule, they appear only once on the scene with regard to a transaction or sale, Mr. McTague. You say they are not the same as the broker-dealers in a continuing business.

MR. McTAGUE: No; that is true. The certificate issuer is a company which is selling its own stock -- and only permitted to sell its own stock.

MR. GRUMMETT: I do not see how one could set up an association amongst those people which would control their activities alone. They would have to come under some other association. I suppose in that case some machinery might be devised whereby their literature would be scrutinized in advance in one way or another.

MR. DOWNER: With respect to these mining companies, which are owned by DePalma, is he the securities issuer, or not?

MR. McTAGUE: DePalma, in the first place, was a registered dealer. He had a house which you would call

a broker-dealer's house. He lost his registration. The next matter which came to the attention of the Commission in my time with regard to that, was that we had registration of a new brokerage house. It was in existence. In a very short time, because of investigation of the matter, it became quite apparent that DePalma was down on the premises, although the registration was with somebody else, but he was dominating it. That registration was taken away and cancelled, too.

I do not know whether any of his activities were carried on at any time through the securities issuer medium. He had diversified interests diversified mines. I do not know whether those companies -- take, for instance, Indigo Consolidated -- at any stage hired salesmen and sold, as a company, or not, or whether they farmed it out on a basis of a trader for other brokerage houses -- I suspect the latter. I do not know whether he ever operated on the basis of a securities issuer.

MR. DOWNER: He could.

MR. McTAGUE: Yes.

MR. DOWNER: That is the thing.

MR. McTAGUE: When you say "he could", the Commission still scrutinizes those matters pretty carefully and they might not give the registration until such time as DePalma was severed from it. That is what we used to do. I do not think he ever tried to do it in that way. He may have, but I cannot recall it.

Do you know at all, Mr. Wismer?

A You are never sure of these things.

MR. McTAGUE: I know. That is why I asked the question.

THE WITNESS: I am not sure. I do not like to lay the blame on him.

MR. DOWNER: You admit that it is a dangerous situation, and there is danger from that angle?

MR. McTAGUE: Yes, oh, yes.

THE CHAIRMAN: We will have a short recess.

---Whereupon a short recess was had.

---Upon resuming.

THE CHAIRMAN: We will now resume.

BY MR. GRUMMETT:

Q Mr. Wismer, following up Mr. Downer's suggestion as to control of the securities issuers, as I said before, I do not think there is any way you can control them through a Board of their own choosing, and elected by them, but would it be feasible to have some sort of permanent board to which they could go, a board set up somewhat similar to yours, composed of officials who would control the securities issuers, but not necessarily members of that association?

THE CHAIRMAN: Is that not what the Securities Commission does now, with the exception that they do not actually pass on their literature?

MR. GRUMMETT: Yes.

MR. DOWNER: I do not think that would be a good thing. That would more or less put a stamp of approval of the Government Commission on that thing. Immediately the man on the street says, "That must be good."

THE CHAIRMAN: The way matters are now constituted, you have certain self-regulating bodies, representing groups of people dealing in certain types of securities business. As far as possible they regulate their own affairs, subject to the supervision of the Securities Commission. The people who are not in those bodies, and who, for certain reasons, cannot conveniently organize, would find themselves in a quite difficult position.

There are many difficulties in organizing securities issuers, because they may only remain such for a few months. They finance themselves as far as they think is needed, and then get out of the business. It is not a continuing business for the securities issuers. It is a continual turn-over of potential members which is involved, and there would be no continuity of policy, and nobody in whose interests it would be to take hold of the matter.

The other possibility is the one which Mr. Grummett suggests of appointing a Board to look after them, but that Board could be only appointed by somebody outside, and it would come right back to the Government. We might as well have it run by the organization we have.

MR. DOWNER: Would it be possible to have their material perused by the Broker-Dealers Association?

MR. GRUMMETT: That would be difficult.

THE CHAIRMAN: After all, the Broker-Dealers Association function is to control the activities of its members and if the material of some outsider comes in they might be pretty tough in respect of that material.

MR. McTAGUE: There is some merit in that, because, as a matter of fact, the Broker-Dealers Association price spreads Committee is dealing with the Stock Exchange and the mining issues of everybody else by agreement.

MR. DOWNER: If a man is a member of the Toronto Stock Exchange, he automatically is a member of the Broker-Dealers Association?

MR. McTAGUE: No. It depends on whether or not he is engaged in primary distribution. I mean, primarily the business on the Exchange is a brokerage business which is limited to commissions. There are a number who are in the business of primary issues, also, so they have to get status as something else besides merely broker status. They get broker-dealer status by belonging to the Broker-Dealers Association or by

being recognized as broker-dealers by the Commission.

There are quite a number of houses on the Exchange which deal as principals but altogether as agents. They have no connection with our group.

BY MR. JOLLIFFE:

Q. With respect to the work of your own Association, you told us about the election and re-election of the Board. Was there not another election which you did not mention more recently than the 1950 election?

A. No. What happened there was that there was going to be an election in the associate member group but finally one of the candidates withdrew, permitting the Board to go back in by acclamation.

Q. Did that mean that the 1951 Board is the same as the 1950 Board?

A. Yes, with the exception of one or two changes which were made due to resignations on account of ill health. For example, Mr. Allan MacLean resigned when he was hospitalized and then the Board elected another broker-dealer to take his place.

Q. The Board has the power to fill vacancies?

A. Yes.

Q. Mr. Wismer, I think we are all impressed with

some of the improvements which have been made, particularly in recent months by your Board and its officers, but, at the same time, I want your comment with respect to this; the record over the last two and one-half years indicates what can only be described as a terrific casualty list in your membership. I have two or three specific questions to ask about it.

Here is a list of the suspensions and cancellations, during the last two years as a matter of fact -- since August, 1949 -- of broker-dealers and salesmen. I believe this is not a complete list but those have been recorded in the Bulletin. It is not complete?

A I would not be able to say offhand.

Q I understood Mr. Lennox to say ---

A I do not think it is complete.

Q ---that there were some cancellations and suspensions which spoke for themselves and there was no need to report them in the Bulletin. I have added the one which took place the other day. It may be that some of these were not members of the Broker-Dealers Association, but if so, you can tell us.

Perhaps that would be the first thing to find out. On the Broker-Dealers list first how many of those were members of the Broker-Dealers Association?

A All of them.

Q They were all members of the Broker-Dealers Association?

A Yes.

Q Would the same thing be true of the salesmen or were some of them salesmen not associate members?

A The salesmen all were associate members.

Q The salesmen were all associate members?

A Yes.

Q Were any of the broker-dealers on that list on April 14th, disciplined by the Broker-Dealers Association before the Ontario Securities Commission took action?

A Four of them were.

Q Four of them were first disciplined by your Association?

A Yes; for matters which came up while they were members of the Association but they were not necessarily matters of a serious nature.

Q Do I understand you to mean that four were not disciplined by the Broker-Dealers Association in respect of the issue which the Securities Commission later cancelled or suspended.

A Oh no.

Q It was not the same issue?

A No; because the Commission made an investigation

and then cancelled or suspended on their findings and the Broker-Dealers Association then expelled them membership in the Association.

Q Yes. The point is unless I misunderstand you, that all the offences in respect of which those suspensions and cancellations were made by the Ontario Securities Commission ---

A Yes. That is what I pointed out.

Q ---before the Broker-Dealers Association took any action.

A That is what I pointed out in connection with the expulsions, from membership in the Association, that, with one exception, the Ontario Securities Commission had conducted the investigations, obtained information, took the action and then we expelled them too, because we do not employ investigators.

Q And, with one exception, it was all done on your initiative? Is that right?

A Yes.

Q You referred to two suspensions last night, or today.

A Three today.

Q That is, on the initiative of the Broker-Dealers Association?

A Yes. As a result of our surprise audit.

I should point out the very close co-operation between the Ontario Securities Commission and our Association because the Ontario Securities Commission gives the right to trade and the fact that we might expel a member from our Association does not take away his right to trade unless the Securities Commission sees fit to cancel his registration subsequently.

BY THE CHAIRMAN:

Q. Yes, in other words, the majority of your members cannot get rid of some of them with whom they are competing.

A. No.

Q. The Securities Commission has the final say as to whether that man's right to trade should be cancelled?

A. Yes.

BY MR. JOLLIFFE:

Q. Here we have fourteen offences which resulted in either suspension or cancellation by the Commission. They must have been serious offences?

MR. MCTAGUE: Might I call your attention, Mr. Jolliffe, in connection with that, a matter which would make that quite reasonable to you -- or, at least, I would think it would. You must remember the Broker-Dealers Association has no power of investigation, they have no right to put people under oath, they have no right

to conduct the investigation and the theory of it always was that when they felt they got into a position of that kind, they called on the Securities Commission which has the power. They invited them to do it. I venture to say that every one of these to which you have reference followed as a result of an investigation which was made under oath by the S. E. C., under, I think it is, Section 30, now in the revision. You must remember this Association has no such powers, at all. All they can do is discuss the matter or get some information and discuss it, and then to be effective they have to go to the Securities Commission.

MR. JOLLIFFE: I think that is very helpful and very relevant, Mr. McTague.

BY MR. JOLLIFFE:

Q. Mr. Wismer, you have been with the Association since before August, 1949. Perhaps you can tell me this. In how many of these cases did the Broker-Dealers Association ask of the Commission or suggest to the Commission that there should be an investigation?

A. Possibly two of the cases where the Commission and the Broker-Dealers Association were working pretty well hand in glove. Other than that, the Securities Commission was proceeding on its own.

Q. I do not doubt that you co-operated with the

Commission whenever you were called upon to do so, but what I am wondering is whether there is any case in which the Broker-Dealers Association initiated the enquiry which ultimately led to the ---

A In none of these cases did the Broker-Dealers Association initiate the enquiry.

Q And, would that also be true of the five cases listed with respect to salesmen, that is, listed on this list?

A Yes. That is true in those cases.

BY THE CHAIRMAN:

Q. Would that be due to the fact that complaints might have been made direct to the Ontario Securities Commission rather than to the Association which started the wheels going?

A Yes. The Ontario Securities Commission by some method, had the information, but there is one thing which I should point out, namely, you have a list here which is not complete, Mr. Jolliffe. It does not include the suspensions by the Broker-Dealers Associations, or the disciplinary action taken by the Association against members on its own initiative.

MR. JOLLIFFE: I did not pick and choose this list. I have not the complete list. This is

simply a list of those recorded in the Bulletin plus the ones Mr. Lennox reported to us on Tuesday, last week.

MR. McTAGUE: Mr. Wismer referred to a case -- I think the Port Hope case -- if I recall correctly, in which the Broker-Dealers Association started the investigation and put the Commission in touch with the situation as a result of which the man was convicted of criminal offences. You have these things initiated by complaints of some kind, normally. If the complainant furnishes an affidavit, of the complaint, then the Chairman of the Commission can launch an investigation, in a formal way. If it is not by affidavit, the Chairman then goes to the Attorney General. You realize the Broker-Dealers Association has not any such kind of machinery -- and it was thought to be much better that they should not have.

BY MR. JOLLIFFE:

Q. Of course, you do have an audit. I would have thought in fairness to the Broker-Dealers Association -- and I do want to be fair, to call a spade a spade, -I would have thought that would fall within the Price case, that is, you people initiated the enquiry. Was that not a surprise audit which started with nothing?

A Not that I can remember.

Q Perhaps it was a Commission audit.

MR. McTAGUE: Snap audit of the Commission.

THE WITNESS: I can tell you that here is one case, Mr. Jolliffe, where the Broker-Dealers Association fined the preceding company \$1000.

BY MR. JOLLIFFE:

Q. Where is that on the list -- half-way down the list?

A Yes. This is not the name, because they had a name previously and the business was taken over by another man.

Here is another case in which the Broker-Dealers Association took disciplinary action which, of course, went on his file at the Ontario Securities Commission.

Here is another case where the Broker-Dealers Association found that the member had submitted false information in order to obtain a price spread but there were mitigating circumstances involved as a result of which they fined him \$500.

Here is another case where a member was disciplined twice by the Board for minor infractions, not having his literature perused.

Here is another case where a member was disciplined. When those records go to the Ontario Securities Commission and are put on file, naturally they keep a sharp eye on the member.

Q Yes?

A But, with respect to the serious matters, with their powers of investigation, they get the evidence which leads to cancellation and suspension by us.

Q In respect of the third case in that list, is it not a fact that the principal had been a member of your Board? I do not know whether or not he still was but he certainly had been at one time?

A Yes. He was a member of our Board as the associate members' representative. But then he resigned from the Board of Governors in order to become a broker-dealer.

MR. McTAGUE: That is a very interesting story. There is a story ahead of that with which the Broker-Dealers Association had a great deal to do which I think perhaps is rather important.

BY MR. McTAGUE:

Q. Mr. Wismer, would you tell that story?

THE CHAIRMAN: It is now 4.00 o'clock. Should we go into this matter at this time?

MR. JOLLIFFE: I have an appointment, but I certainly do not wish to cut off Mr. McTague.

THE CHAIRMAN: I, also, have an appointment, so I think perhaps it would be better to adjourn because we agreed to adjourn at 4.00 o'clock.

MR. JOLLIFFE: Is that all right, Mr. McTague?

MR. McTAGUE: Surely.

MR. JOLLIFFE: No injustice done.

MR. GRUMMETT: As long as Mr. McTague remembers to bring it up at the commencement of our next session.

MR. McTAGUE: I suppose we will receive a notice of the next session. You are not sitting tomorrow?

THE CHAIRMAN: No.

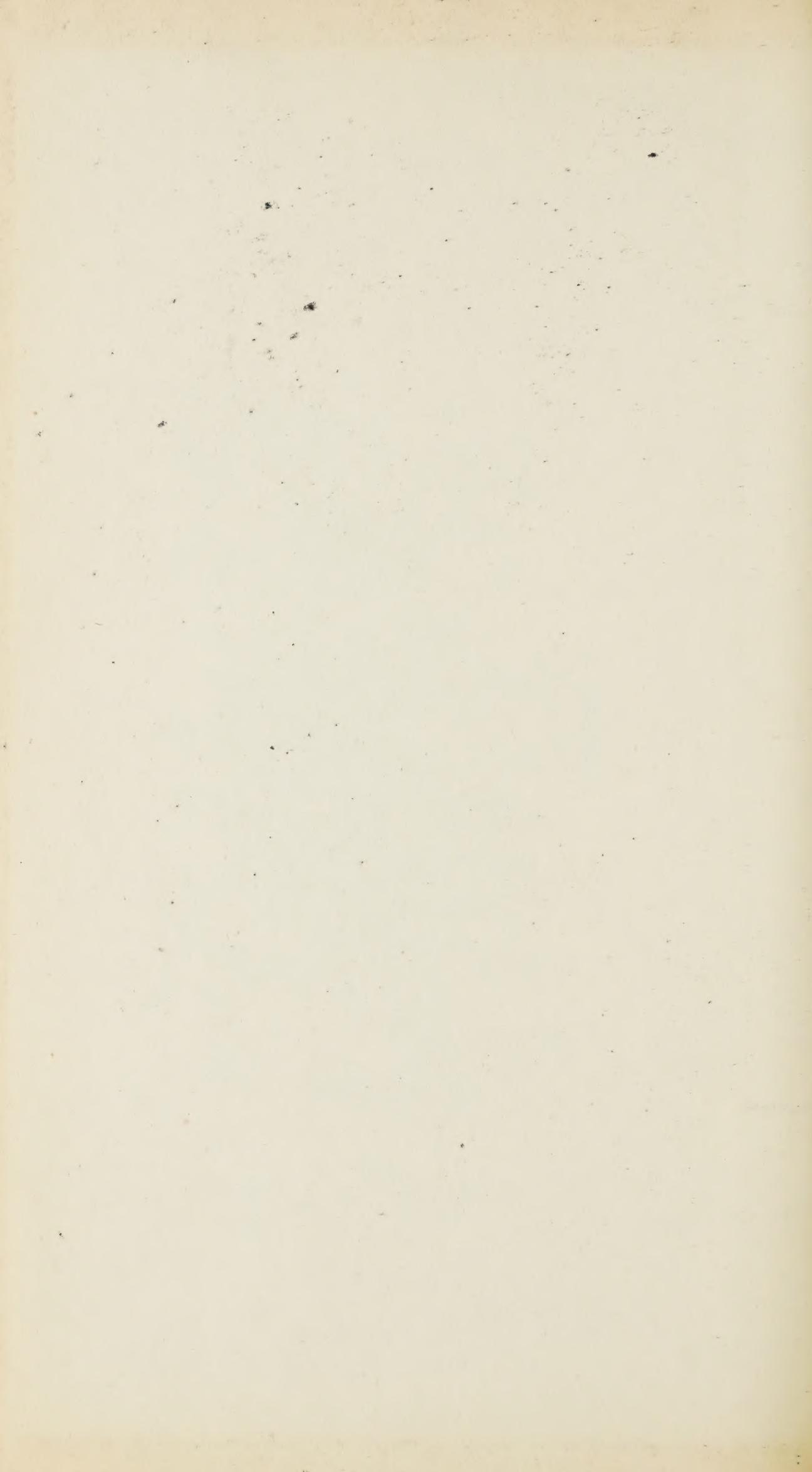
MR. McTAGUE: You will probably require our presence when you re-open your sittings sometime in October?

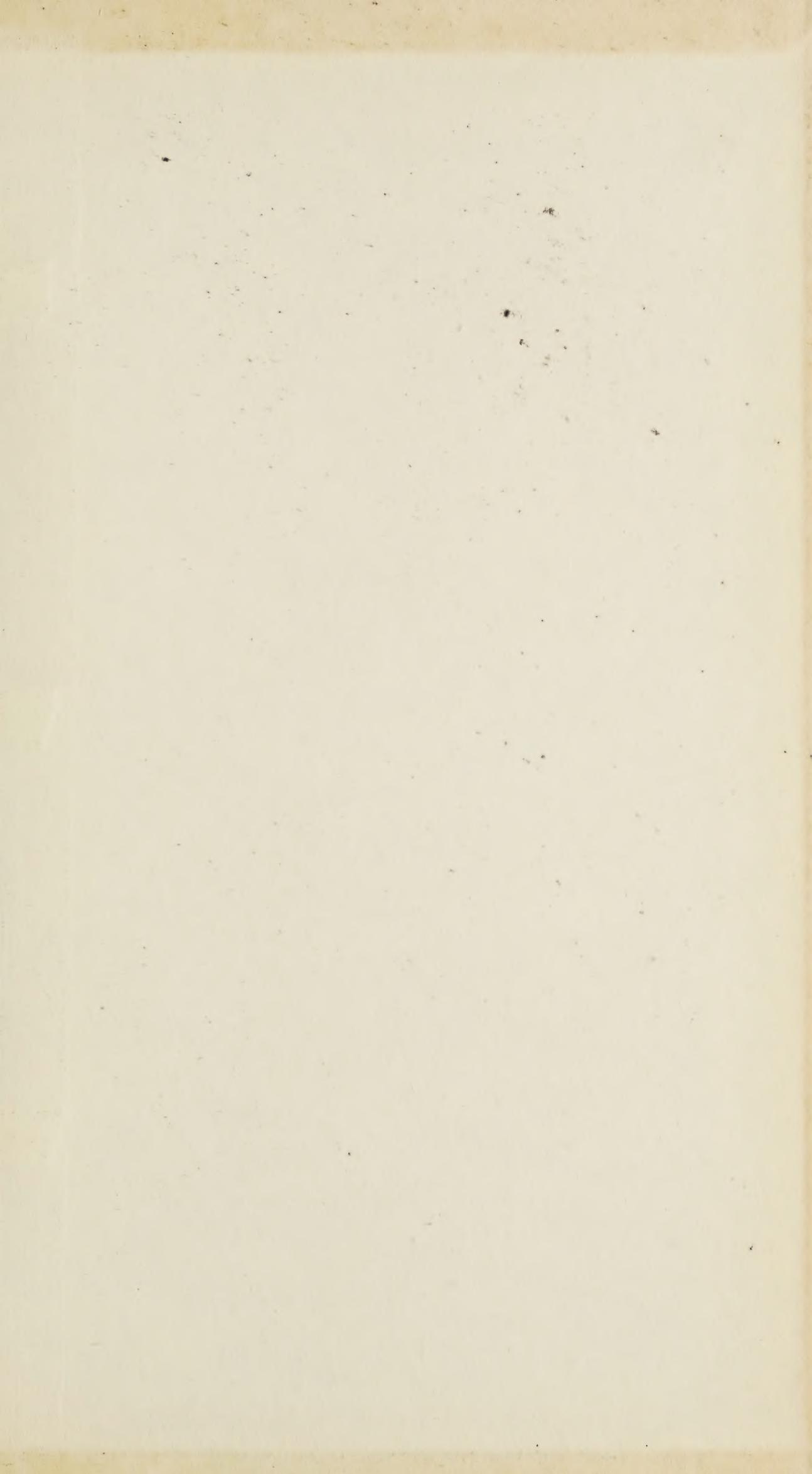
THE CHAIRMAN: I will be in touch with you. I think it has been set for the 1st of October. However, as I say, we will notify you.

MR. McTAGUE: You can never tell what will happen in the meantime.

---The witness temporarily retired.

---Whereupon the further proceedings of this Committee adjourned until Monday, October 1st, 1951.





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